INDEX.

	PAGE
Caption	1
Indictment	1
Petition and Motion of Defendant for New Trial	2
Exhibit "A"—Certificate of Hebrew Sheltering & Immigrant Aid Society, dated 6/17/47	6
Exhibit "B"—Affidavit of David Rubin, D. D. S., dated 6/26/47	6
Exhibit "C"—Affidavit of N. Selcovitz, dated 6/26/47	7
Order dated 11/14/47 denying Motion for New Trial	8
Appeal Bond	9
Receipt from Geo. W. Parker, Clerk, U. S. District Court to Samuel Hannah Fogel, for $10,000.00, dated 11/14/47	12
Notice of Appeal	12
TRANSCRIPT OF PROCEEDINGS	13
Case called for hearing, etc.	13
Evidence for Defendant:	
Testimony of Will Hancock	14
Lynn D. Laswell	19
John H. McQuorter	22
W. C. Biggers	25
W. D. Anderson	27
W. C. Young	29
Exhibit Defendant #1—Record of Entry from U. S. Dept. of Justice, Immigration & Naturalization	31
Testimony of Glenn A. Torrence	34

INDEX—Continued

	PAGE
Transcript of Proceedings—(Continued):	
Evidence for the Government:	
Testimony of W. C. Young (Recalled)	40
Evidence for Defendant:	
Testimony of Nathan Selcovits	45
Joe Fogel	63
Exhibit Defendant's #3—Transcript of Proceedings, filed 3/11/47	69
Case called for hearing, etc.	70
Arraignment of Defendant and Plea of Not Guilty, Jury Waived	70
Evidence for the Government:	
Testimony of Glenn A. Torrence ..	72
Alton Bryant	79
A. W. Tippett	83
Motion of Defendant at the close of the Govt. case for acquittal	86
Colloquy between Court and Counsel ..	87
Statement made by Mr. Corenbleth, Counsel for defendant	89
Statement made by Mr. Cantrell, Counsel for the Government	94
Colloquy between Court and Counsel ..	95
Order Overruling Motion of Defendant for Directed Judgment and Exception	97
Evidence for Defendant:	
Testimony of Joseph Fogel	97
Statement made by Mr. Dailey, Counsel for Defendant	111

POOR COPY

BLEED THROUGH

INDEX—Continued

PAGE

Transcript of Proceedings—(Continued):
Evidence for the Government:
Testimony of John Patterson Walker, Jr. .. 115
Exhibit Government #1—Application to the Southland Life Ins. Co. for $5000.00 insurance by S. H. Fogel, dated 3/9/27 122
Exhibit Government #2—Assignment of Life Insurance Policy from Sam H. Fogel to A. Toplitz, dated 3/-24/43 125
Exhibit Government #3—Photostat of Southland Life Insurance Co. Policy issued to Sam Hannah Fogel for $5000.00, dated 3/29/27 133
Exhibit Government #4—Escrow Agreement between Sam H. Fogel and Republic National Bank of Dallas, dated 3/25/43 138
Exhibit Government #5—Application for Loan of $750.00 by Sam H. Fogel to Southland Life Insurance Co., dated 12/15/33 141
Exhibit Government #6—Letter, Sam H. Fogel to Southland Life Ins. Co., dated 3/26/45 143
Exhibit Government #7—Photostat of Application to the Southland Life Ins. Co. for $10,000.00 insurance by S. H. Fogel, dated 7/30/27 ... 146
Exhibit Government #8—Application for Loan of $1,000.00 by Sam H. Fogel to Southland Life Insurance Co., dated 7/20/23 147

INDEX—Continued.

PAGE

Transcript of Proceedings—(Continued):
Evidence for the Government—(Continued):
Testimony of J. P. Walker, Jr.—(Cont'd):
Exhibit Government #9—Application for Loan of $1,000.00 by Sam H. Fogel to Southland Life Insurance Co., dated 6/24/33 149
Exhibit Government #10 — Affidavit (Signature) of Sam Hannah Fogel, dated 11/3/47 150
Exhibit Government #11—Application to Southland Life Ins. Co. by Sam H. Fogel for Retirement Annuity Plan, for Two Units on his Life, dated 6/15/34 152
Exhibit Government #12—Application to Southland Life Ins. Co. by Sam H. Fogel for Retirement Annuity Plan, for Two Units on his Life, dated 5/14/34 156
Exhibit Government #13—Application to Southland Life Ins. Co. by Sam H. Fogel for Retirement Annuity Plan, for Two Units on his Life, dated 7/12/34 160
Exhibit Government #14—Application to Southland Life Ins. Co. by Sam H. Fogel for Retirement Annuity Plan, for Two Units on his Life, dated 8/14/34 163
Exhibit Government #15—Application to Southland Life Ins. Co. by Sam H. Fogel for Retirement Annuity Plan, for Two Units on his Life, dated 9/7/34 167

POOR COPY

BLEED THROUGH

INDEX—Continued

PAGE

Transcript of Proceedings—(Continued):
Evidence for the Government—(Continued):
Testimony of J. P. Walker, Jr.—(Cont'd):
Exhibit Government #16—Application to Southland Life Ins. Co. by Sam H. Fogel for Retirement Annuity Plan, for Two Units on his Life, dated 10/5/34 171
Exhibit Government #17—Application to Southland Life Ins. Co. by Sam H. Fogel for Retirement Annuity Plan, for Two Units on his Life, dated 10/5/34 175
Exhibit Government #18—Application to Southland Life Ins. Co. by Sam H. Fogel for Retirement Annuity Plan, for Two Units on his Life, dated 11/5/34 179
Exhibit Government #19—Application to Southland Life Ins. Co. by Sam H. Fogel for Retirement Annuity Plan, for Two Units on his Life, dated 11/5/34 182
Exhibit Government #20—Application to Southland Life Ins. Co. by Sam H. Fogel for Retirement Annuity Plan, for Two Units on his Life, dated 1/31/35 186
Exhibit Government #21—Application to Southland Life Ins. Co. by Sam H. Fogel for Retirement Annuity Plan, for Two Units on his Life, dated 3/12/35 190

INDEX—Continued

PAGE

Transcript of Proceedings—(Continued):
Evidence for the Government—(Continued):
Testimony of P. P. Ballowe 198
Exhibit Government #22—Letter, Southland Life Ins. Co. to Sam Hannah Fogel, dated 11/5/45 206
Exhibit Government #23—Application to Southland Life Ins. Co. by Sam H. Fogel for Retirement Annuity Plan, for Two Units on his Life, dated 4/13/34 207
Exhibit Government #24—Appearance Bond executed by S. H. Fogel, dated 10/30/46 211

Testimony of Glenn A. Torrence (Recalled) 213
Charles Young 216

Evidence for Defendant:
Testimony of Nathan Selcovits (Recalled) 220

Evidence for the Government:
Testimony of Isadore Segall 222

Exhibit Defendant's #4—Photostat of Registration Card of Sam Fogel for World War I, dated 6/5/17 233
Opinion of the Court 235
Order Overruling Motion of Defendant for New Trial 237
Agreement of Counsel as to Transcript of Proceedings 243

POOR COPY

BLEED THROUGH

INDEX—(Continued)

	PAGE
Order dated 12/11/47 approving Transcript of Proceedings	243
Judgment and Sentence, entered 2/19/47 in Original Trial	244
Appellant's Designation of Contents of Record on Appeal	245
Clerk's Certificate	247

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CAPTION.

BE IT REMEMBERED, that at a regular term of the United States District Court in and for the Northern District of Texas, begun and holden at Dallas, Texas, on the 15th day of September, 1947 and which said term is still in session, the Honorable T. Whitfield Davidson, United States District Judge for the Northern District of Texas, presiding, the following proceedings were had, to-wit:

No. 11,681 Criminal.

UNITED STATES OF AMERICA

versus

SAMUEL HANNAH FOGEL.

---

2 INDICTMENT.

(Title Omitted.)

The grand jury charges:

That heretofore, to-wit, on or about the 16th day of February, A. D. 1942, one Samuel Hannah Fogel, hereinafter referred to as defendant, and whose more full and true name is to the grand jurors unknown, in Dallas County, Texas, in the Dallas Division of the Northern District of Texas, did, unlawfully, willfully, and feloniously, with intent to evade induction into the land or naval forces of the United States of America, fail and neglect to register with a Selective Service Draft Board, which said act and failure to act on the part of the said

defendant, as aforesaid, were in violation of the Act of Congress of the said United States, approved September 16, 1940, as amended, commonly cited as the Selective Training and Service Act of 1940, as amended, and the Rules, Orders and Regulations issued and promulgated by virtue of and in pursuance thereto, and the said defendant was then and there such a person who was bounden under the provisions and requirements of said Act, Rules, Orders and Regulations to so register as is required by the provisions of the said Act and the said Rules, Orders, and Regulations.

A True Bill:

H. W. MARSHALL,
Foreman.

ROBERT B. YOUNG, JR.,
United States Attorney.
WILLIAM CANTRELL, JR.,
Special Assistant to the United States Attorney.

---

3 PETITION AND MOTION FOR NEW TRIAL.

Filed November 3, 1947.

(Title Omitted.)

To the Honorable Judge of said Court:

Now comes Samuel Hannah Fogel, defendant in the above entitled and numbered cause, and files this his petition and motion for a new trial on the grounds of newly discovered evidence, and would show to this Honorable Court:

1. That on the 22nd day of January, 1947, he was indicted for having on the 16th day of February, 1942, for

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having failed and refused to register under the Selective Training and Service Act of 1940 as amended and the rules, orders and regulations issued and promulgated thereunder, in that he was a man over the age of 21 and was not more than 45 years of age, and upon a trial of this case he was on the 19th day of February, 1947, convicted and sentenced by this Honorable Court to serve 18 months in a United States Penitentiary and pay a fine of $1,000.

2. That from said judgment and order he appealed to the United States Circuit Court of Appeals for the Fifth Circuit, and on the 12th day of June, 1947, in a divided opinion that Honorable Court affirmed this cause.

3. That thereafter he perfected a petition for certiorari to the Supreme Court of the United States, and on the 20th day of October, 1947, this petition was denied.

4. At the time of his trial he was named as "Samuel Hannah Fogel"; that the agents of the Bureau of Immigration and Naturalization testified that they had been unable to find the entry of this defendant into the United States, who was a Polish immigrant and who was alleged to have entered the United States some time in the year 1913; that they were unable to establish the age of the defendant at the time he entered because they could find no records in the Bureau of Immigration and Naturalization at the port of entry. That since said trial it has been discovered that this defendant had entered under the name of Schloime Vogel, and therefore the Bureau of Immigration and Naturalization had no way of finding the record of the defendant's entry; since said trial it has also been found, and the defendant now has a certified copy thereof, that he was registered in the Hebrew Sheltering and Immigrant Aid Society at the time he entered on June 30, 1913, and at that time he

was 20 years of age, which would show that he was not required to register under the Selective Service Act of which he was charged of having violated; a copy of which said instrument is hereto attached, marked Exhibit "A", and made a part of this petition. That supporting said instrument and in proof that this Schloime Vogel and this defendant, Samuel Hannah Fogel, is one and the same person, he attaches hereto affidavit of Dr. David Rubin, marked Exhibit "B", and made a part hereof, and an affidavit of Nathan Selcovitz, marked Exhibit "C" and made a part of this petition.

5. That the defendant has been advised that under the name of said Schloime Vogel the Bureau of Immigration and Naturalization at Philadelphia has an official record of his entry that will show that this defendant was 20 years of age on June 30, 1913, and therefore was not required to register under the act and proclamation for which he was charged with having violated; that the defendant has taken the necessary steps to secure this official record and expects to have it and prove by that record that he was not so required to register at the trial of this case.

6. That since said trial the defendant has further learned that he registered under the Selective Service Act of World War I in Waxahachie, Texas, and that his said registration will show that he was far beyond the age of 45 at the time he was indicted for having so failed to register, and that he is advised that this official record is now in the War Department of the United States and that he has made necessary efforts to secure certified copies of that instrument, and upon a hearing of this motion he will establish by that record that he was not required to register under the Act for which he was convicted.

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7. The defendant represents to this Honorable Court that copies of the instruments above referred to have been applied for by this defendant, and in view of the time expiring and the many records that will have to be searched it will be some time before they are available, but he does expect to produce all of them in this Honorable Court to support this motion for a new trial upon newly discovered evidence.

Wherefore, he prays that the judgment and sentence assessed against him in this case be set aside and that he be given and granted a new trial, and that pending said trial he have an order from this Honorable Court directing the United States Marshal to stay the service of commitment on him until he can produce the necessary documents above and have a hearing on this motion for a new trial.

In the alternative, he prays that so much of said sentence directing that he serve 18 months in a United States Penitentiary be probated upon terms directed by this Honorable Court.

HOWARD DAILEY,
Attorney for Defendant.

State of Texas,
County of Dallas.

Before Me, the undersigned authority, on this day personally appeared Samuel Hannah Fogel, and, after having been by me first dulf sworn, stated on his oath that the allegations contained herein are true in substance and in fact.

SAMUEL HANNAH FOGEL.

Subscribed and sworn to before me this the 3rd day of November, 1947.

(Seal)

EDNA VAN ARSDELL,
Notary Public, Dallas
County, Texas.

7 EXHIBIT "A".

(Copy.)

Hebrew Sheltering & Immigrant Aid Society,
1201 Chestnut Street, Phone RI 6-6780,
Murray Levine,
Executive Director.

June 17th, 1947.

From Philadelhia Branch.

To U. S. Immigration & Naturalization Service.

Subject: Verification of Landing.

This is to certify that the records on file at this office will show that one Schloime Vogel age 20 Arrived at the Port of Philadelphia State Penna. on the 30th day of June, 1913, on the S. S. Merion.

Remarks: We do not vouch that it pertains to the applicant.

(Signed) HIAS OF AMERICA,
By MURRAY LEVINE.

8 EXHIBIT "B".

Affidavit.

Commonwealth of Pennsylvania,
City & County of Philadelphia, ss.

Dr. David Rubin, now residing at 1719 So. 58th Street, Philadelphia, Pa., being duly sworn according to law deposes and says that:

1. He is 54 years of age.

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2. He is a practicing Dentist with officers at 1719 So. 58th Street, Philadelphia, Pa.

3. He has known Samuel Fogel, now residing at 8511 Inwood Road, Dallas, Texas, since his arrival from Russia on June 30th, 1913.

4. That at the time of his arrival, the said Samuel Fogel was known as and arrived under the name of Schloime Vogel.

5. That Schloime Vogel is the same person now known as Samuel Fogel and resides at 8511 Inwood Road, Dallas, Texas.

DAVID RUBIN, D. D. S.

Sworn to and subscribed before me this 26th day of June, 1947.

SAMUEL A. SOLOMON,
(Seal) Notary Public.

Commission expires Jan. 20, 1947.

9 EXHIBIT "C".

Affidavit.

Commonwealth of Pennsylvania,
City & County of Philadelphia, ss.

Nathan Selcovitz, now residing at 4641 N. Warnock Street, Philadelphia, Pa., being duly sworn according to law deposes and says that:

1. He is 61 years of age.

2. He had known Samuel Fogel, now residing at 8511 Inwood Road, Dallas, Texas, since his arrival from Russia on June 30th, 1913.

3. That at the time of his arrival, the said Samuel Fogel was known as and arrived under the name of Schloime Vogel.

4. The deponent further avers that the said Schloime Vogel, now known as Samuel Fogel, resided with the deponent in Philadelhhia for a period of 6 months after his arrival in Philadelphia from Russia.

5. That Schloime Vogel is the same person now known as Samuel Fogel and resides at 8511 Inwood Road, Dallas, Texas.

N. SELCOVITZ.
(Nathan Selcovitz)

Sworn to and subscribed before me this 26th day of June, 1947.

SAMUEL A. SOLOMON,
(Seal) Notary Public.

Commission expires Jan. 20, 1951.

ORDER DENYING MOTION FOR NEW TRIAL.

10 (Title Omitted.)

On this, the 14th day of November, 1947, the motion of the defendant Samuel Hannah Fogel for a new trial in the above styled cause came on to be heard, and came the defendant Samuel Hannah Fogel in person and by

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and through his attorney, and came the United States by and through the United States Attorney for the Northern District of Teras, and the Court having heard the motion, evidence and argument of counsel, is of opinion that the motion should be in all things denied.

It Is, Therefore, Ordered, Adjudged, And Decreed that the motion for a new trial be and the same is hereby in all things denied.

Dated at Dallas, Texas, this, the 14th day of November, A. D., 1947.

T. WHITFIELD DAVIDSON,
United States District Judge.

---

11 APPEAL BOND.

(Title Omitted.)

I, Samuel Hannah Fogel, principal, acknowledge myself indebted and bounden to pay the United States of America the full and just sum of $10,000.00, for which I bind myself, my heirs, executors, and administrators forever, and to secure the payment of which I herewith deposit with the Clerk of the United States District Court for the Northern District of Texas the sum of Ten Thousand and No/100 Dollars, if default should be made in the condition following, to-wit:

Whereas, in this cause pending before the District Court of the United States, for the Northern District of Texas, at Dallas, his motion for a new trial filed and brought under Rule 33 of the Rules of Criminal Procedure of the District Courts of the United States was

overruled, and that he gave his notice of appeal to the United States Circuit Court of Appeals for the Fifth Circuit, and was, pending said appeal, allowed bail in the sum of $10,000 by the Honorable T. Whitfield Davidson, United States District Judge for the Northern District of Texas.

Whereas, bail was fixed in the sum of $10,000 pending the disposition of said appeal.

Now the conditions of this recognizance are such, that if the said Samuel Hannah Fogel shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Fifth Circuit when said cause is reached for argument and when required by law of said United States Circuit Court of Appeals and from day to day thereafter in said United States Circuit Court of Appeals until said cause is finally disposed of, and shall abide by and obey all orders made in said cause and shall surrender himself in execution of the judgment and sentence appealed from upon such day as the District Court of the United States for the Northern District of Texas may direct and pay the fine of $1,000 in said cause imposed, if the judgment and sentence appealed from shall be affirmed, then shall appear before the District Court of the United States for the Northern District of Texas on such day or days as shall be set for a re-trial of said case, provided the judgment of the District Court of the United States for the Northern District of Texas is reversed by the said United States Circuit Court of Appeals; and shall not depart the jurisdiction of the District Court of the United States for the Northern District of Texas without leave, then, this recognizance to be void, otherwise to remain in full force, virtue and effect.

And I, the undersigned principal, Samuel Hannah Fogel, do hereby stipulate, agree, and consent that in case

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the aforesaid recognizance shall be forfeited, judgment may be entered for the sum set forth in said recognizance and that execution issue thereon according to law.

Dated at Dallas, Texas, this, the 14th day of November, A. D., 1947.

SAMUEL HANNAH FOGEL,
(Samuel Hannah Fogel)
Principal.

Acknowledged before me on this, the 14th day of November, A. D., 1947.

GEORGE W. PARKER,
Clerk, United States District Court for the Northern District of Texas.
By JEFFIE B. MADDOX,
Deputy.

Approved this the 14th of Nov., 1947.

T. WHITFIELD DAVIDSON,
Judge.

Approved as to form:
CLYDE G. HOOD,
Asst. U. S. Atty.
HOWARD DAILEY,
Attorney for defendant.

13 Copy.

United States of America
vs. No. 11,681 Criminal.
Samuel Hannah Fogel.

Received from Samuel Hannah Fogel, as Surety, upon the Appeal Bond of defendant, Cash for the sum of Ten Thousand and no/100 ($10,000.00) Dollars.

Dated this the 14th day of November, A. D. 1947.

GEO. W. PARKER,
Clerk, U. S. District Court,
Northern District of Texas
at Dallas.
By MARY CONGER,
Chief Deputy.

Receipt given in Duplicate.

---

14 NOTICE OF APPEAL.

Filed November 14, 1947.

(Title Omitted.)

To the Honorable Circuit Court of Appeals, for the Fifth Circuit:

Now comes Samuel Hannah Fogel, hereinafter referred to as appellant, and would show to this Honorable Court:

1. That his residence is 8111 Inwood Road, Dallas, Texas; that his lawyer is named Howard Dailey, with offices in the Republic Bank Building, Dallas, Texas.

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2. That he is not confined in jail; that he does not elect to enter upon the service of his sentence.

3. That he was convicted for having violated certain provisions of the Selective Service Act in that he failed and refused to register on February 16, 1942, and as being a man who was required to register at that time; that he appealed his case from said judgment of conviction to the United States Circuit Court of Appeals for the Fifth Circuit, which was affirmed; that he appealed to the United States Supreme Court for a writ of certiorari, which was refused; that when the case was remanded and before commitment was served upon him under the mandate in that case he filed his motion for a new trial under Rule 33 of the Rules of Criminal Procedure of the District Court ofthe United States, and upon a hearing thereof a motion for a new trial was denied, and he here now files this his notice of appeal to the United States Circuit Court of Appeals for the Fifth Circuit.

HOWARD DAILEY,
Attorney for Appellant.

In the District Court of the United States for the Northern District of Texas, Dallas Division.

United States of America
vs. No. 11681 Criminal.
Samuel Hannah Fogel.

Be It Remembered that the above entitled and numbered cause came on to be heard before Honorable T. Whitfield Davidson, on the 12th day of November, A.

D., 1947, at which time the following proceedings were had:

Appearances:

Honorable Clyde Hood and Honorable William Cantrell, Assistant United States Attorneys, Dallas, Texas, appearing for Plaintiff.

Honorable Howard Dailey, Dallas, Texas, appearing for Defendant.

20 PROCEEDINGS.

WILL HANCOCK, being produced on behalf of the defendant, being first duly sworn testified as follows:

Direct Examination.

By Mr. Dailey:

Q. You are Mr. Will Hancock?

A. Yes.

Q. Where do you live, Mr. Hancock?

A. Waxahachie.

Q. You are a lawyer?

A. Yes, sir.

Q. And how long have you practiced law, Mr. Hancock?

A. About 43 years.

Q. 43 years?

A. About that.

Q. In Waxahachie?

A. Yes, sir; possibly a little longer, but I was in bad health when I first got out, and I did not practice for quite a while.

Q. Yes, sir. Mr. Hancock, do you know Sam Fogel?

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A. Yes.

Q. How long have you known him?

A. Since about—I'll have to look at a memorandum there; I had a case in Court; prior to—January, 1919, about two years, I think, prior to that date.

Q. Now, where did you live at that time, Mr. Hancock?

A. Waxahachie.

Q. Did you know his business at that time?

A. Yes.

Q. Tell the Court what his business was about 1917.

A. Well, I don't remember the exact date, but at 1917 or 1918 he was in the scrap iron business, that is where I first knew him.

Q. You represented him then as his lawyer?

A. Yes, but that was during the war, World War I, and he was buying scrap iron, and was shipping it, and there was a rebate on the freight.

Q. Yes, sir.

A. And they did not send him the amount of a rebate as to the number of cars that he shipped, so he had me to work it up, and we went into it, and got the record straightened up for Mr. Kennedy, the NTC agent, and the Katy agent, and it was quite a length of time we spent handling the business, and getting it straightened out. That was my acquaintance with him.

Q. That was? Did you know his age at that time?

A. No, sir.

Q. I will ask you if he was dealing as an adult person, if he was over 21 years of age?

Mr. Hood:

Your Honor, we object to that, a person might get out and deal as a minor with all the appearances of an adult.

The Court:
We will sustain the objection as to the form of that question.

(By Mr. Dailey):
Q. I will ask you, Mr. Hancock, was he in 1917, or about that time, at the time he was engaged in the junk business, and you represented him, in his connection to it—were your dealings with him as a man or a juvenile, or a guardian, or was he a man dealing for himself at that time?

Mr. Hood:
Well now, Your Honor, we object to that form, a man deals for himself, I remember during the first World War, I sold cotton, hay and pigs.

The Court:
I think it would be permissible for counsel to show he acted and held himself out as a man of age.

Mr. Hood:
Of course, a boy around 15 or 17 thinks he is a man.

The Court:
Of course, that is a presumption, but if that is what he was doing, we will permit it.

(By Mr. Dailey):
Q. Is that true, or not?
A. Yes, he was handling, he was transacting business as a man, about his age, he was dealing in pretty big business, and that scrap iron business.
Q. And subsequent to that, was he engaged in buying cotton down there?
A. Yes, sir.

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Mr. Dailey:

I believe that's all.

Cross Examination.

By Mr. Hood:

Q. Judge, in your experience over there, you have dealt with a lot of young boys, a lot of young boys over there, 16 or 17 years of age that have been dealing themselves, have you not?

A. Yes, but I never dealt with a boy that handled business like he was handling, cotton business and junk business.

Q. Do you know his age at that time?

A. No, I had no occasion to know.

Q. You will not testify how old he was?

A. No, I don't know.

Q. You will not say he was over 21 years of age, will you, Judge?

A. Well—

Q. You don't know?

A. I don't know, but he was dealing in lots of money, I know.

Q. Let me ask you this, Judge, you see his appearance here; apparently at that time he had black hair, as you recall, is that right?

A. Yes.

Q. That was just four years after 1913, is that correct, and so far as you remember did he have a ruddy complexion?

A. Oh, I couldn't—that is a long time ago.

Q. Well, do you recall he was about the same height as he is now?

A. Yes, about the same height.

Q. All right, do you recall whether or not then, at that time, he had gray eyes?

A. No, I don't recall.

Q. In other words, did his eyes turn from gray to brown since that time?

A. Well, I couldn't tell you that.

Q. Did his hair turn from light brown to black?

A. I don't remember the color of his eyes.

Q. I am just reading his certificate they have from his steamship company, which says he is five feet five inches tall, fair complexion, light brown hair and gray eyes.

A. I don't think he has got gray eyes.

Q. Did he go under the name of Schloime Vogel?

A. I always knew him by Sam.

Q. Sam. He didn't tell you his name was Schloime, S-c-h-l-o-i-m-e (spelling)?

A. If he had I don't remember.

Q. Did he ever employ you to change his name from Schloime Vogel to Sam Hannah Fogel?

A. No.

Q. So far as you know he did not go into the army in the first World War, did he?

A. If he did I don't know it.

Q. He was staying home making money, is that correct?

A. Well, he was there.

Q. He was awheeling and adealing over there, was he not?

A. What is that?

Q. He was awheeling and adealing over there, and trading?

A. In the scrap iron business and cotton business.

Q. Yes, and you never heard where he was taken into the army in the first World War?

A. No.

Mr. Hood:

That is all.

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Mr. Dailey:
That is all, Judge, thank you

LYNN D. LASWELL, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

25 Direct Examination.

By Mr. Dailey:
Q. You are Mr. Lynn D. Laswell?
A. Yes, sir.
Q. Where do you live, Mr. Laswell?
A. Waxahachie.
Q. How long have you lived there?
A. About 59 years.
Q. What is your business at this time, sir?
A. Insurance, general insurance.
Q. Back in 1916, and along about there, did you live at Waxahachie?
A. Yes, sir.
Q. And what was your business then?
A. I was executive vice president of the Waxahachie National Bank.
Q. At that time did you know one Sam Fogel, this man sitting here?
A. Yes, sir.
Q. Now, in 1916, and thereabouts, you were with the Citizens National Bank?
A. Waxahachie National Bank.
Q. Waxahachie National. At that time you knew Sam Fogel I believe you said?
A. Either in '16 or '17, right along there.
Q. Either '16 or '17, along there. Now, as a banker, did you have any transactions, or did any transactions come through your bank, with Sam Fogel?

A. We cashed his cotton checks; we didn't handle his account.

Q. You cashed the checks?

A. Yes, sir.

Q. And that was for cotton. Was he buying cotton at that time?

A. He was buying cotton, practically all of them, all cotton.

Q. Was he dealing as a man mature, a man passed 21 years old? He was not dealing as a minor, was he, with a guardian, or anything like that?

A. Well, I don't know, he didn't impress me as a minor.

Q. Well, you cashed the checks, the checks were cashed through your bank?

A. Yes, sir.

Q. And that went along like that, and that was in 1916 or 1917?

A. Yes, sir.

Q. Did you know him prior to that time?

A. No, I don't remember just when I first knew him, but along about that time he was buying cotton at Waxahachie.

Mr. Dailey:

I see. That is all.

Cross Examination.

By Mr. Cantrell:

Q. Please, sir, I believe you said you knew him in 1917, is that right?

A. Yes, sir, 1916 or 1917.

Mr. Dailey:

1916 or 1917.

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(By Mr. Cantrell):

Q. 1916 or 1917, I misunderstood him. Do you remember what color hair he had at that time?

A. No, I don't—rather dark, I think.

Q. Rather dark. You don't recall the color of his eyes then?

A. I think they were dark.

Mr. Cantrell:

I see. All right, thank you, sir, that is all.

Re-Direct Examination.

By Mr. Dailey:

Q. At the time you knew Sam Fogel, did he live at Waxahachie?

A. Yes, sir.

Mr. Dailey:

That is all, thank oyu.

Re-Cross Examination.

By Mr. Cantrell:

Q. Just one further question, please, sir. Was he about the same height then as he is now?

A. Yes, sir.

Mr. Cantrell:

That is all, thank you.

JOHN H. McQUORTER, a witness called on behalf of the defendant, being first duly sworn testified as follows:

28 Direct Examination.

By Mr. Dailey:

Q. You are John H. McQuorter?

A. John H.

Q. John H.?

A. Yes, sir.

Q. Where do you live?

A. Waxahachie.

Q. And how long have you lived there?

A. I was born there, born and raised there.

Q. What is your business at this time?

A. I am vice president of the Waxahachie Bank & Trust Company.

Q. How long have you been with that bank, Mr. McQuorter?

A. I started to work for that bank August 1, 1917.

Q. 1917. At the time you started to work for that bank did you know Sam Fogel?

A. I don't think I knew Sam before I went to work at the bank; I knew Sam after, after I went to work, I think.

Q. Then, from the time you entered the bank?

A. Yes, sir.

Q. At that time did that bank, and at the time you went there in 1917, did that bank carry Sam Fogel's account?

A. Well, he was doing business there with us, yes, sir.

Q. And what was his business?

A. He was buying cotton on the street, buying the street cotton.

POOR COPY

BLEED THROUGH

Q. And your bank handled those transactions?

A. Yes, sir, that is my recollection.

Q. In other words, he brought in the evidence of the purchase of this cotton, and you paid off on it, is that correct?

A. In other words, he gave checks on our bank for the cotton.

Q. I see. You went to work at the time that was going on at this bank?

A. Yes, sir, that is correct.

Q. At that time did he live at Waxahachie?

A. I believe he was making his home there, I would see him every day there.

Q. Saw him every day there?

A. Most every day.

Cross Examniation.

By Mr. Cantrell:

Q. Did you know this defendant over here by what name?

A. Sam Fogel.

Q. Sam Fogel. Did he ever tell you he was named anything else?

A. No, sir.

Q. Was the color of his hair at that time about like it is now?

A. Well, I don't guess he had any gray hairs in there then.

Q. Was it dark brown?

A. Yes, he had dark hair.

Q. Were his eyes about the same color as they are now?

A. Yes, he looked pretty much the same, he is a little older.

Q. Do you have any 15 or 16 or 17 year old boys that have accounts in your bank down there?

A. Well, we have youngsters that open up accounts in our bank, just, you know, little savings accounts, small amounts.

Q. Is this defendant about the same height now as he was then, when you knew him first?

A. Yes, he was, he was a low heavy set fellow when I knew him.

Q. About the same height?

A. About the same height.

Q. Just one more, please.

A. Yes, sir.

Q. That is all, thank you, sir.

Re-Direct Examination.

By Mr. Dailey:

Q. Mr. McQuorter, you wouldn't cash youngsters'—shipping stuff at 15 or 17 years old—you would not pay one of his checks, if he went out and buys a bale of cotton, if he didn't have any—

A. Well, he wouldn't be buying any cotton, I wouldn't think at that age.

Mr. Hood:

We object to that question and answer.

The Court:

There is no jury here.

Mr. Hood:

We want the record to show we object anyway.

Mr. Dailey:

May Mr. McQuorter be excused?

Mr. Hood:

Surely.

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BLEED THROUGH

W. G. BIGGERS, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

32 Direct Examination.

By Mr. Dailey:

Q. You are Mr. W. C. Biggers?

A. Yes, sir.

Q. And do you live at Waxahachie?

A. Yes, sir.

Q. How long have you lived there, Mr. Biggers?

A. Ever since 1915.

Q. And what is your business now?

A. Well, I had—I just retired; I used to be in the cotton business, export business.

Q. Cotton business.

A. Export of cotton business.

Q. Were you in the cotton business in Waxahachie aorund 1915 and 1916 and 1917?

A. Yes, sir, I commenced in the fall of '15.

Q. 1915?

A. Yes, sir.

Q. At that time did you know Sam Fogel here?

A. Well, I don't remember whether it was as early as '15 or not, but I knew him along about '17 and '18; I don't remember; just about that time.

Q. What was his business then, Mr. Biggers?

A. He used to buy cotton, and sell it to me on the street there, to me, buy cotton, and bring it up and sell it to me.

Q. In Waxahachie?

A. Yes, sir, in Waxahachie.

Q. And your testimony is you know that that was as early as 1917 and 1918, along there?

A. Yes, sir, as well as I remember; I think I'm right about it.

Q. Yes, sir. Well was he—

A. He might have been there in 1915 and 1916, but I just had these other dates; I know he was there in 1917 and 1918; whether he was there earlier than that, I just don't remember.

Q. He was buying cotton and selling it to you?

A. Yes, sometimes he would sell it to me, and sometimes he would sell it to somebody else.

Mr. Hood:

Your Honor, we are going to object to this line of testimony, because of the fact any boy could go out and buy and sell cotton; it is immaterial.

The Court:

We will hear it.

(By Mr. Dailey):

Q. At that time, Mr. Biggers, did he appear to you to be a mature man, a man able to deal for himself, under the—

A. Well, he was a young fellow, I wouldn't be able to tell you what his age was.

Q. But, he was dealing in—

A. Yes, he was buying and selling me cotton, occasionally, and selling other people.

Q. Yes, sir. And, I believe that is all, thank you.

Cross Examination.

By Mr. Cantrell:

Q. Mr. Biggers, just one or two questions, please, sir.

A. Yes, sir.

Q. Was he about the same height then as he is now?

Mr. Hood:

Would you mind standing up, Mr. Fogel?

A. Well, it seems like he is about the same, to me.

POOR COPY

BLEED THROUGH

(By Mr. Cantrell):

Q. Was his hair about the same color as it is now, ignoring the gray in it?

A. Well, his hair seems to me, as well as I remember, was dark then; he wasn't as bald as he is now.

Q. Were his eyes about the same color?

A. Yes, it seems to me, I would know him most anywhere, you know.

Mr. Cantrell:

That is all, thank you.

Mr. Dailey:

Thank you, Mr. Biggers.

W. D. ANDERSON, a witness called on behalf of the defendant, being first duly sworn testified as follows:

35 Direct Examination.

By Mr. Dailey:

Q. You are Mr. W. D. Anderson?

A. Yes, sir.

Q. I believe they call you Captain Anderson down at Waxahachie?

A. Yes, sir.

Q. You live at Waxahachie?

A. Yes, sir.

Q. How long have you lived there, Captain Anderson?

A. 1900.

Q. Did you live at Waxahachie around '15 and '16 and '17?

A. Yes, sir, I did.

Q. What was your business at that time?

A. I was manager and president of the Waxahachie Ice Works.

Q. At that time did you know Sam Fogel here?
A. Only faintly.
Q. I beg your pardon?
A. Only faintly, indistinctly.
Q. You just knew him?
A. Yes.
Q. You didn't have any dealings with him?
A. I didn't have any dealings with him, no, sir.
Q. At that time, did he live at Waxahachie?
A. I don't know.

Mr. Dailey:
You don't know. That is all, thank you, sir.

Cross Examination.

By Mr. Cantrell:
Q. Captain, did you ever know the defendant to pay a poll tax and vote down at Waxahachie?
A. I beg your pardon, I did not understand?
Q. Do you know whether he ever voted down there, or not?
A. No.
Q. Do you know how old he is?
A. I haven't any idea.
Q. Just a moment. I have one or two more questions, sir. At the time when you first knew him, was the color of his hair about the same as it is now?
A. I do not remember much about him, frankly.
Q. Was he dark or light?
A. I couldn't say. You see, I was not in the cotton business then; my business was the ice manufacturing business, and I just don't recollect anything about him, only that I remember that he was there.
Q. All right, do you recollect the color of his eyes at that time?
A. No.

POOR COPY
BLEED THROUGH

Q. Well, was he about the same height as he is now?
A. Well, I should say so.

Mr. Cantrell:
Thank you.

W. C. YOUNG, a witness called on behalf of the defendant, being first duly sworn testified as follows:

37 Direct Examination.

By Mr. Dailey:
Q. State your name, please?
A. W. C. Young.
Q. What is your business, Mr. Young?
A. I am Officer in Charge of the Immigration and Naturalization Service in Dallas.
Q. At Dallas. Mr. Young, in your official capacity, did you receive from the United States Department of Immigration and Naturalization at Philadelphia, record of the entry of one Schloime Vogel into the United States?

Mr. Hood:
We object to that at this time, Your Honor, for the purpose of the record, because it is our contention they can't show this is one and the same man that is mentioned in this document referred to.

The Court:
All right, we will note the objection, we will hear the other testimony.

(By Mr. Dailey):
Q. You did receive that, did you, Mr. Young?
A. Yes.

Q. Do you have it with you?
A. I do.

Mr. Dailey:
May we offer a copy, and you keep it. Do you want the original?

Mr. Hood:
You all have the original, do you not, certified to?

A. Yes, sir, there are certified ones in the file.

The Court:
Let me see the paper.

Mr. Hood:
We have no objection to the copy, they have the original, Your Honor, if it is all right with Counsel—

Mr. Dailey:
We will introduce that in evidence as the Defendant's Exhibit No. 1, if the Court please.

(The instrument referred was marked Defendant's Exhibit No. 1 for identification, and a photostat of same is hereto attached.)

POOR COPY

V 240

Name
Vogel, Schloime

Port of Entry	Manifest No.	Class
Philadelphia, Penna.	L	3rd

Date	S. S.	Line
6/30/13	Merion	.....

Certificate of Admission of Alien

No. Dallas, Texas. File Unknown.
November 4, 1947.
(Telegraphic Request)
To Be Sent Air Mail.

HARDING M. SOMERS,
Signature
Verification Clerk.
Title

hms.

Age	Sex	Married	Occupation	Able To Read	Able To Write
20	M	S	Tailor	Y	Y

Citizen of	Race	Place of Birth
Russia	Hebrew	Roszyny, Russia

Visa or Permit No.	Section	Place and Date of Issue
.....	.....	.....

Last Permanent Residence
Roszyny, Russia.

Name and Address of Nearest Relative or Friend in Country Whence Alien Came
Father: Chaim Vogel, Roszyny, Russia.

Destination	Head Tax Status
Philadelphia, Penna.	Paid

By Whom Passage Paid	Money
Brother	None

In U. S. Before	When	Where	Going To Relative	Going To Friend
No	.....	.....	Brother	.....

Name and Complete Address of Relative or Friend
Josef Vogel, 1613 S. Orkney St., Phila., Pa.

Purpose in Coming and Length of intended Stay	Health
Perm.	Good

Height	Complexion	Hair	Eyes	Distinguishing Marks
5'5"	Fair	Lt. Brn.	Gray	None

Accompanied By
.....

Immigration and Naturalization Service.
U. S. Department of Justice.
Form 1-404-A.

DEFT'S EX. No. 1.

The Court:
Proceed.

(By Mr. Dailey):
Q. That showed at the time of his entry in 1913, he was alleged to be 20 years of age, is that right?
A. The person this refers to.
Q. Yes, sir, that person there?
A. Yes, sir.
Q. And it shows his brother is named Josef Vogal?
A. Right.
Q. His brother. And that his father was named Chaim Vogel, and was born at Roszyny, Russia?
A. Yes, sir.
Q. Now that is now Poland, isn't it?
A. I believe it is, I haven't checked that, I am not sure, but I think it is.
Q. But, at that time it was part of Russia. The Court will take judicial notice of that, of course?
A. That statement shows that, I don't know.

Mr. Dailey:
That is all, Mr. Young.

Cross Examination.

By Mr. Hood:
Q. Mr. Young, at the time your department, representatives of your department were interviewing this defendant, and questioning him, at the time he signed these sworn statements to your department, did he ever, at any time, tell you on what ship he came over, or the port of entry, or the date, or anything in connection with his entry, into this country?
A. No, sir.
Q. He never did, at any time?
A. No, sir.

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Q. And it was only after this motion for a new trial was filed that you were able to obtain this statement, is that correct?

A. That is right.

Q. That is all. And you cannot say, of course, it is not your testimony that this Schloime Vogel, who is reported to have been five feet, five inches tall, twenty years of age, fair complexion, light brown hair and gray eyes is one and the same person as this defendant, who sits here, who has brown eyes, black hair, and ruddy complexion, and reported to us to be five feet, eight inches tall?

A. No, sir.

Mr. Hood:

That is all.

Re-Direct Examination.

By Mr. Dailey:

Q. At the time, Mr. Young, that you had this fellow officially under interview, he did tell you he was born at this place in Russia, did he not?

A. I didn't have the man officially under interview, I assigned that case to Mr. Torrence, he took the statement from him.

Q. Yes, but he did, in answer to his questions, he did say this is where he was born, didn't he?

A. I couldn't say that—Mr. Torrence took the statement from him, he has the statement there.

Mr. Hood:

I think Mr. Torrence has the statement.

Mr. Dailey:

All right, I believe that is all, Mr. Young.

Re-Cross Examination.

By Mr. Hood:

Q. Did he ever tell you he registered for the first World War?

A. No, sir.

Q. But he did admit to you he did not register for the second World War, didn't he?

A. Yes, sir, and Mr. Torrence.

Mr. Hood:

That is all.

GLENN A. TORRENCE, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

42 Direct Examination.

By Mr. Dailey:

Q. What are your initials, Mr. Torrence?

A. Glenn A. Torrence.

Q. You are, I believe, called an Agent of the Bureau of Immigration and Naturalization of the United States?

A. I am a Naturalization Examiner with the Immigration and Naturalization Service.

Q. Yes, sir, and stationed in Dallas?

A. Stationed in Dallas, Texas.

Q. In your official capacity, I believe that you interviewed Mr. Fogel here with reference to an application for citizenship, did you not?

A. Correct, yes, sir.

Q. At any time during that official transaction you had with him, did he tell you where he was born?

A. Yes, sir.

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Q. Where did he say he was born at?

A. He said it was in a place, R-a-c-l-e-n-z, Poland.

Q. I will ask you to refresh your memory, if he did not tell you he was born in R-o-s-z-y-n-y (spelling)?

A. No, sir.

Q. Where did he say?

A. In R-a-c-i-a-n-z (spelling) Poland.

Q. R-a-s-z—

A. I don't know just how it is spelled, it is in the record.

Q. It is in the record. Do you have your record, please, sir?

A. Yes, sir.

Q. Will you refer to it, and tell the Court—

A. It is R-a-c-i-a-n-z P-o-l-s-k-a G-u-b-e-r-n-i-a Poland.

Q. Now, did he tell you how to spell it, or did you know how to, sir?

A. He told me how to spell it.

Q. He told you how to spell it. And at any time during that interview, did he tell you what his father and mother's names were?

A. I don't recall that he did; however, that information is on his application that he submitted.

Q. Yes, sir.

A. For naturalization.

Q. And it is on the application for citizenship?

A. Yes, sir.

Q. That he submitted. I believe that's all.

Cross Examination.

By Mr. Cantrell:

Q. Mr. Torrence, just a moment. On your interview with the defendant on February 11, 1946, do you recall questioning him in connection with a trip which he had made into the Republic of Mexico?

A. I do, yes, sir.

Q. Did he in connection with that trip, and your interviewing him, and asking him about it, did he make any statement as to his age at the time he made that trip?

A. I am sure he did, I do not recall right now what his answer was.

Q. Is this your own record here of that interview?

A. That is right, yes, sir.

Q. Will you look at that, and refresh your memory as to what he said about his age at that time? Just read the questions and answers.

A. The question was to establish whether he had been absent, or not. "Have you ever been absent from the United States, since you first arrived on July 10, 1916?" That is the date he originally alleged he entered. "No, I haven't, with the exception of about a half an hour about 1917, '18 or '19." And then later on, "How old were you at the time you made that trip to Mexico?" His answer was, "I was about 18 years old."

Q. Then, that is consistent with the date which he had given you at his birth date?

A. That is correct, yes, sir.

Q. In 1898. Was that June 30, 1898, or June 10th? It was June 10th, I believe, was it not?

Mr. Dailey:
July 10th.

A. July 10th.

(By Mr. Cantrell):

Q. Mr. Torrence, I would like to ask you this, in connection with this certificate that counsel has offered in evidence, is this a certificate that you would normally have in possession down here?

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A. No, we only secure that where application has been made for naturalization.

Q. I see. And, you did not actually know anything about this, until after, this particular certificate, and did not obtain it, until after this motion for a new trial was made, is that correct?

A. That is correct, yes, sir.

Mr. Cantrell:

That is all.

Re-Direct Examination.

By Mr. Dailey:

Q. Mr. Torrence, I believe that on the trial of this case, that you testified that you had searched the records of whatever records your Department makes, of his entry into the United States, and you stated that you had, isn't that correct?

A. That is correct, yes, sir.

Q. And you stated at that time that you had been unable to find any evidence of his entry into the United States?

A. That is correct, yes, sir.

Mr. Dailey:

That is all, thank you.

Re-Cross Examination.

By Mr. Cantrell:

Q. Mr. Torrence, back in February 11, 1946, when you were questioning this defendant, those questions grew out of his application to establish a record of lawful entry, did they not?

A. That is correct, yes, sir.

Q. So he had come to the Immigration and Naturalization Service, trying to establish he entered the United States lawfully?

A. That is correct, yes, sir.

Q. And you set up such a record, and it was at that time that he represented to you where he was born, what his birth date was in 1898, and all those other answers that he gave you to questions?

A. Correct.

Q. They were all directed to the idea of establishing a record of lawful entry into the United States as an immigrant?

A. That is correct, yes, sir.

Q. By the way S-c-h-l-o-i-m-e Vogel that this certificate concerns, did this defendant ever give you that name, as having been known by that name?

A. No, sir.

Q. Isn't it a fact that in his application that that questions is asked, "Were you ever known by any other name?"

A. That is correct, yes, sir.

Q. Did he ever tell you he was known by that name?

A. The question is asked there, "I haven't used another name in this country than that given above", and the name given above is "Sam Hannah Fogel".

Q. All right, I will ask you this, who gave you the name Schloime Vogel, if he didn't give it to you?

A. Possibly your office furnished us that information, we asked for a verification of arrival on that, I don't recall where that information came from.

Q. Isn't it a fact that his own attorney gave it to you, and asked you to obtain it, Mr. Dailey?

A. It is possible, yes, sir.

Q. Or perhaps one of us. You know you did not get it from the defendant?

A. No, sir, we did not.

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Mr. Cantrell:
That is all.

Re-Direct Examination.

By Mr. Dailey:
Q. Mr. Torrence, just one minute, please, sir. Do you, or do you not know that S-c-h-l-o-i-m-e (spelling) Vogel is the same as "Sam Fogel" in English?
A. No, sir, I certainly do not.
Q. You don't know that?
A. No, sir.
Q. You don't know that it isn't, do you?
A. No, sir.

Mr. Dailey:
That is all, thank you.

The Court:
I would like to have one or more of the witnesses who had business dealings with him at Waxahachie, state if he could read and write, and how he signed his name at that time.

Mr. Dailey:
I believe Mr. McQuorter, or Mr. Laswell,—has he gone?

Mr. Hood:
Mr. McQuorter of the bank is here.

The Court:
You can just stand right there.

Mr. McQuorter:
Judge, the only way I ever knew him was "Sam Fogel" and that is the way he signed his name.

Mr. Hood:
With the Court's permission, we would like to ask Mr. Hancock this question: Did you ever know of him registering over there at Waxahachie to vote, or pay poll tax?

Mr. Hancock:
No.

Mr. Hood:
Did he always sign his name, in his business transactions with you as "Sam Fogel"?

Mr. Hancock:
Yes.

Mr. Hood:
He did?

Mr. Dailey:
If the Court please, I would like about five minutes recess, to talk to some witnesses that just arrived on the train this morning from Philadelphia, that I have not had an opportunity to talk to.

The Court:
Does the Government have any evidence it would like to dispose of?

Mr. Hood:
Yes, sir, we do.

The Court:
We might use it for the next ten or fifteen minutes.

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Mr. Dailey:

Of course, the Court will, and the record will show we have not rested, we are allowing the Government to proceed, and we are offering these other witnesses, and the certificate from the War Department.

The Court:

If it would be a convenience to anybody, we will hear these witnesses out of their regular order, if not, we will recess.

W. C. YOUNG, being recalled on behalf of the plaintiff, being heretofore duly sworn, testified as follows:

50 Direct Examination.

By Mr. Hood:

Q. Your Honor, we would like to recall Mr. Young just for a question or two, please. Mr. Young, your name is Mr. W. G. Young, and you have already taken the stand in connection with this hearing, and you are in charge of the local office of the Immigration and Naturalization Service?

A. Yes, sir.

Q. Mr. Young, you have had occasion to interview this defendant on many occasions, prior to this trial, in connection with the criminal charge on which this motion is being made?

A. Yes, sir.

Q. Now, did you question him particularly about his age?

A. I did not question him about his age, but he made a statement to me concerning his age on several different occasions.

Q. What did he state his birth date was?

Mr. Dailey:

If the Court please, that was in evidence here in the last trial, everything that was in that trial, of course, is already in evidence, as I understand it.

Mr. Cantrell:

If your Honor please, this defendant has made the admission.

The Court:

We will hear it.

Mr. Dailey:

Yes, we have this objection.

(By Mr. Hood):

Q. July 10, 1898?

A. He made no statement to me, prior to his submission of his application as to the date of his birth, but he did tell me he was a boy when he came to Waxahachie, and some Protestant minister down there raised him, and he was a boy, and he emphasized that is why they couldn't find any record of where and when he entered the United States.

Q. You did question him particularly as to the port of entry?

A. Many times, many times.

Q. Did he tell you he was just a small boy, and didn't know?

A. A young boy.

Q. A young boy?

A. Yes, sir.

Q. And didn't remember the name of the ship, or port of entry?

A. Many times, he made the unqualified statement.

Q. On this name Schloime Vogel, how did your department get hold of that name, Schloime Vogel, a man

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five feet, five inches tall, fair complexion, light brown hair and gray eyes?

A. The District Attorney addressed a letter to me, about eight or ten days ago, stating that some welfare organization had found a record pertaining to a person of that name, and as a result of his letter, I addressed a communication to our office, and received that certificate which pertains to that person named there, whoever it may be.

Q. Whoever it may be. But, did this defendant ever at any time tell you that he ever went by the name of "Schloime Vogel"?

A. He never did.

Mr. Hood:

That is all.

Cross Examination.

By Mr. Dailey:

Q. Do you know whether or not that "Schloime Vogel" and "Sam Fogel" is the same person. You don't know that, of course?

A. No.

Q. And in Polish or whatever it is, you don't know whether "Schloime Vogel" is the same as "Sam Fogel" in English, do you? Do you know that?

A. I have no idea.

Q. You don't know that is not true, do you?

A. No.

Mr. Dailey:

That is all, thank you.

Re-Direct Examination.

By Mr. Hood:

Q. I might ask you this, he did remember where he was born in 1898, but he did not remember a year later where he came into this country?

A. Yes.

Mr. Hood:

That is all.

Re-Cross Examination.

By Mr. Dailey:

Q. Where did he tell you where he was born?

A. In Poland, as I recall it, certainly that is all in the records.

Q. Did he tell you, did you see this?

A. Yes.

Q. Did he tell you he was born in that place?

A. I couldn't state that he said he was born in that particular town.

Mr. Dailey:

That is all.

Mr. Cantrell:

If Your honor please, I believe that is all the testimony that we are in position to put on at this time, until counsel has rested. I think we have gone as far as we can go.

The Court:

Recess Court until 1:30.

(Noon recess was taken from 12 o'clock noon to 1:30 o'clock p. m.)

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NATHAN SELCOVITS, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

54 Direct Examination.

By Mr. Dailey:

Q. Your name is Nathan Selcovits?

A. Yes, sir.

Q. Where do you live, Mr. Selcovitz?

A. Philadelphia.

Q. Philadelphia?

A. Yes.

Q. Talk loud so I can hear you, and these gentlemen, and the Court can hear you, Mr. Selcovits. How long have you lived in Philadelphia?

A. I came here in 1907; in, yes, in 1907.

Q. 1907?

A. Yes, since then, I lived at Philadelpiha.

Q. Do you know Sam Fogel this man here, by the side of me?

A. I know him well, from the Old Country, yes.

Q. How long have you known him?

A. I have known him, when he was a small boy, about—

Q. Can the Court hear this witness?

The Court:

Barely so, yes.

Mr. Dailey:

I cannot hear the testimony.

The Court:

You must talk louder, so the lawyers can carry on this case.

A. I knew him as Schloime Vogel, since he was a boy, about 14 or 15 years, in the Old Country.

The Court:
As I understand, you knew his father?

A. His father, his mother, and the whole family.

The Court:
All right, go ahead.

(By Mr. Dailey):
Q. Now, you knew him in Poland, is that right?
A. In Poland, yes.
Q. It was then Russia, a part of Russia?
A. Yes, Russia, at that time it was Russia, now it is Russia.
Q. You came to the United States in 1907?
A. In 1907.
Q. Well, you knew Sam Fogel in the Old Country prior to that time?
A. Yes.
Q. Now, can you, from your memory, testify about when Sam Fogel, came to the United States?
A. He came to the United States in 1913.
Q. 1913?
A. In 1913, and the same day when he came off from the ship, he came to my house.
Q. He came to your house?
A. Yes, he was living at my house for quite a few months, maybe about five or six months.
Q. Did you know his brother Joe Fogel?
A. Yes, he was living too.
Q. You knew him in the Old Country also.
A. Yes, sir.
Q. Was his brother living there with you at the time Sam Fogel came into this country?

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A. Yes.

Q. And where did you live at that time?

A. At that time I was living at 1613 South Orkney.

Q. 1613 South Orkney street?

A. Yes, sir.

Q. Philadelphia, Pennsylvania?

A. Yes, sir.

Q. I will show you here what has been designated as Defendant's Exhibit No. 1. It says here that Josef Vogel, "name and complete address of relative or friend", that says, "Josef Vogel, 1613 Orkney Street, Philadelphia, Pennsylvania"?

A. He was living at my house.

Q. He was living at your house?

A. Yes, sir.

Q. And that is where you lived at the time Sam Fogel entered the United States?

A. Yes, it was my house.

Q. Yes?

A. And Joseph Fogel was living with me in one room, and he sent for his brother, and he came up from the ship, he brought him over to my house the same day.

Q. The same day?

A. The same day.

Q. Did you know Sam Fogel's father, I believe you testified you did?

A. Yes.

Q. Will you tell the Court whether or not that that is his father's name?

A. His father Chaim, that is the same spelling.

Q. How do you pronounce that?

A. Chaim.

Q. Chaim?

A. Chaim, that is the name we called him in the Old Country.

Q. In the Old Country?

A. And I believe that is the same spelling, S-h-a-i-m (spelling).

Q. And that was Sam Fogel's father?

A. That was his father, yes, sir.

Q. What was his mother's name?

A. Hannah.

Q. Hannah?

A. Yes, sir.

Q. How do you spell that, is that H-a-n-n-a-h (spelling)?

A. I guess it is the same spelling that is here, and I don't know exactly how they spell Hannah.

Q. How did you pronounce, or how would you pronounce Sam Fogel in the Polish language, like it is used in the Old Country?

A. Well, you can use Vogel or Fogel wth the "V" or "F".

Q. With an "F"?

A. Yes, it is the same.

Q. What is this word right here, S-h-l-o-i-m-e (spelling)?

A. Schloime, that is a name.

Q. What is that in English?

A. In English? It is Solomon, or it is Sam, or Samuel, or something like that. The name is the same, like we call it, we used to call it Schloime in the Old Country.

Q. I see. At the time Sam Fogel arrived in the United States in June, 1913, and went to your house at 1613 South Orkney street, Philadelphia, Pennsylvania?

A. Yes, sir.

Q. Was he a grown man at that time?

A. Oh, yes, he was grown, like I can picture him now, he was the same fellow, husky fellow, except he is older now, because at that time he was nice—

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Mr. Dailey:
I believe that is all.

Cross Examination.

By Mr. Hood:
Q. Do you know the day of his birth?
A. The date of his birth date?
Q. Yes, do you know when he was born?
A. He was born in the same town I was born.
Q. I mean, what date he was born?
A. No.
Q. You don't know what the date was?
A. No.
Q. Were you living over there when he was born?
A. I can't remember that, I was a kid at that time.
Q. You can't remember that?
A. I can't remember that, I was six years old.
Q. How old are you?
A. I am now 61.
Q. 61. All right then, you can't remember when he was born?
A. No.
Q. You don't know his birth date, do you?
A. His birth date exactly?
Q. Yes.
A. No, I remember him, I left there, the town, he was about 15 years old, I guess, or 14, something like that.
Q. Now, how many brothers were there in the family?
A. The family was just three brothers.
Q. Three brothers in the Fogel family, is that correct?
A. Yes.
Q. Is that right?
A. Yes.

Q. Yes, there were three brothers in the Fogel family?

A. Yes, sir.

Q. What color was Sam's hair, when he came over here, Schloime's, whatever you call him?

A. Black, I guess.

Q. On this certificate it says light brown.

A. Maybe it is light brown, I can't tell you.

Q. Well, what is your testimony? It says here, doesn't it, he was five feet, five inches tall, and he had fair complexion, is that correct?

A. I can't remember that.

Q. You can't remember that, but you remember him coming to your house?

A. I remember his visit.

Q. Did he have a ruddy complexion?

A. He has the same complexion.

Q. He has the same complexion?

A. That he looks now.

Q. Did he have light brown hair, or did he have black hair?

A. I don't remember just exactly, maybe it was light brown, or dark brown, it might have been.

Q. You don't know. You don't know when he was born?

A. I don't remember that, because I was six years old, I can't remember it.

Q. Look at him, what color are his eyes there, so far as you can tell?

A. I guess they are black.

Q. Have they changed in color since he came over here?

A. No.

Q. It says here this Schloime Vogel had gray eyes, doesn't it?

A. Gray eyes?

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Q. Yes.

A. I don't know.

Q. That is what it says, doesn't it? Eyes gray. Now, tell His Honor whether or not this Schloime Vogel had gray eyes, when he came to your house?

A. I can't say that about the eyes, I didn't look at his eyes, I looked at his face.

Q. Has this man's eyes changed color, since you have known him?

A. I don't think so.

Q. He has had black hair ever since you have known him?

A. I don't remember if it is black, I don't remember from 1913, whether it was black, or dark brown, or not.

Q. You can't remember about the color of his hair, can you?

A. I would recognize him between a thousand people, it is the same person.

Q. And you can tell His Honor he has always had dark eyes, can't you?

A. I guess so.

Q. Let's don't guess about it.

A. To me, I never pay attention about that.

Q. Let's look at it this way, had his eyes changed color, you would have noticed it, wouldn't you?

A. I don't know whether I would notice it, or not, I know the only thing is, I know he hasn't changed a bit.

Q. He hasn't changed a bit, except he got a little bald, and his hair got a little gray, but the color is about the same?

A. He is a little bald, yes.

Q. The color of his hair is about the same, and the eyes, dark brown, they are about the same?

A. I don't remember about that.

Q. He is the same height?

A. The same height.

Q. You say you are kind of vague on those eyes?

A. I don't remember, I didn't pay any attention to the eyes, I never thought I would have anything to do with his eyes.

Q. Where is this third Vogel or Fogel brother?

A. Third?

Q. Where is the third one?

A. In Europe, I guess.

Q. You don't know where he is, but there is a third brother in the Fogel family?

A. He got killed.

Q. You don't know that he got killed?

A. Yes, I know it.

Q. How?

A. Yes, I know it.

Q. Do you know the name of the ship this man came in on?

A. The name of the ship?

Q. Yes.

A. No.

Q. Were you there when he came off the ship?

A. No, sir.

Q. You testified awhile ago—

A. He came to my house.

Q. I understand your testimony, but I want to straighten this out, you say when he got off the ship you didn't see him get off the ship?

A. No, his brother came there with him, with his suitcase, and everything, came from the ship, that is how I know it.

Q. How do you fix the date in 1913?

A. What did you say?

Q. How do you fix the date in 1913, when he came to your house?

A. The date?

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Q. Yes, you said it was in 1913?

A. In June, in June, 1913.

Q. Yes. How old was he when he came to your house?

A. He looks to me about 20, or a little more, something like that.

Q. You don't know. You don't know when, do you?

A. I don't know exactly the date.

Q. Do you know his age right now?

A. His age?

Q. Yes, do you know how old he is right now?

A. Well, as I figure it, the 20—

Q. I am not asking you that, you say you are figuring it at 20, that is what it says on this. Can you tell His Honor how old he was when he came to your house in 1913?

A. That is what I am trying to tell you, I am figuring.

Q. I am not asking you what you figure, do you know?

A. I don't know exactly the date.

Q. That is right, you don't know?

A. As I remember, when I left the town, he looked to me about 14 or 15 years.

Q. I am asking you, can you tell this Court?

A. Yes.

Q. How old this man was when he came to your house in 1913, not what he looked?

A. He looks to me about 20 years.

Q. I know you have seen this certificate, and it says 20 on here, with gray eyes, too, but I am asking you this question, can you tell His Honor how old this man was when he came to your house in 1913, if he did come?

A. He did come.

Q. Yes?

A. I can figure it.

Q. I am not asking you to figure, do you know of your own knowledge?

A. I don't know how to answer that question, I know he came—

Q. I will get at it this way. Do you know the year he was born?

A. The year he was born? No, I don't remember.

Q. That is all.

A. I was six years old then, and I don't remember the year.

Re-Direct Examination.

By Mr. Dailey:

Q. Mr. Selcovits, again referring to the Defendant's Exhibit No. 1, that reads "father: Chaim Vogel", that you testified awhile ago was his father?

A. Yes, sir.

Q. That he was born in R-o-s-z-y-n-y Russia?

A. Yes, that is the same city, the same name.

Q. And that is where Sam Fogel was born?

A. Yes, sir.

Q. And where you were born?

A. Yes, sir.

Q. And where Joe Fogel was born?

A. And Joe Fogel, yes.

Q. I will show you here what will be designated as Defendant's Exhibit No. 2.

(Instrument referred to was marked Defendant's Exhibit No. 2 for identification.)

Q. That is the Hebrew Sheltering & Immigrant Aid Society, do you know that Society in Philadelphia?

A. Yes.

Q. Do you know about them?

A. Yes.

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Mr. Dailey:
I am going to offer this in evidence.

Mr. Hood:
We will object to the introduction of it.

Mr. Dailey:
We offer in evidence Defendant's Exhibit No. 2, which purports to be an instrument from the Hebrew Sheltering & Immigrant Aid Society.

A. Aid Society.

Mr. Dailey:
At 1201 Chestnut street, Philadelphia, Pennsylavnia.

A. Yes, I know that.

Mr. Dailey:
What appears to be a certified copy of the information received on this man's entry into the United States. It is signed by a Murray Levine, Executive Director, and with the seal of this society on it. We offer that in evidence.

Mr. Hood:
Your Honor, we object to that on the grounds of hearsay, immaterial and irrelevant, and they attempted, in the trial of this cause, to introduce that by parole testimony, and the Government's contention at that time was sustained.

The Court:
We have a rule, statutory, and also by long established practice, by which official documents, and copies of official documents may be offered in evidence. We don't think this measures up to that standard, counsel.

Mr. Dailey:

We are offering that, if the Court please, as an ancient document, that has been in existence there for many years, and we are also offering it, if the Court please, the Government took the position that there was not any such instrument existing at the time of this trial, and they objected to it, as Mr. Hood said, among other things, that this certificate would be the best evidence, and now we have it.

Mr. Hood:

But, the original certificate, Your Honor, proven up by a custodian of the records of that society, that is just a private society up there, just like the Elk's Club, or some other organization here.

Mr. Dailey:

If the Court please, we think it is admissible for the further reason, that the introduction of the instrument, which, under the statutes, Your Honor just stated, was clearly admissible, a certified copy of the official immigration record of the entry has been introduced.

The Court:

That, we think, is admissible, if you have it.

Mr. Dailey:

We have already inrtoduced it, Your Honor, and we say that that is admissible in aid to showing—in other words, the official instrument has the very same information as to everything, as to father, and as to place of birth.

The Court:

You can see where this will lead to. The Court cannot take judicial knowledge, he may know, but the Court

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cannot take judicial knowledge, when the Rotary Club was organized.

Mr. Dailey:
That is right.

The Court:
Or when the Kiwanians were organized, and he does not know when the Hebrew Sheltering Aid Immigrant Society was organized.

Mr. Dailey:
That is right.

The Court:
It may be junior; it may have been organized since the defendant came into this country. It could have procured this information from other records and certified to it as being the result of its investigation. It is not original evidence, it is not a copy of original evidence.

Mr. Dailey:
I get Your Honor's point. May I take the witness a little further on that point?

The Court:
Go ahead.

(By Mr. Dailey):
Q. Do you know this Society of the Hebrew Sheltering & Aid Immigrant Society?
A. I know about it, I know it existed before I came to this county.
Q. Was it in existence at the time Sam Fogel came to this country?
A. Yes, sir.

Q. Is that an organization that attempts to aid Jews?
A. Immigrants.
Q. Entrants to the United States?
A. Well, I guess so.
Q. You can't guess here, we are testifying. Does it do that kind of business?
A. They are used for helping the immigrants come in.
Q. Immigrants come to the United States
A. To the United States, yes, sir, that is what they are for.
Q. Did you go there when you entered the United States?
A. Well, I didn't come to them, my uncle sent for me.
Q. Sent for you?
A. Yes.
Q. So, you didn't go?
A. I didn't go to them.
Q. You didn't come through them?
A. But I know my wife came over, and she was a girl at that time.

Mr. Hood:
We object to all this as irrelevant and immaterial.

(By Mr. Dailey):
Q. This is for the purpose, Mr. Hood—
A. That is for the Immigrants Society.
Q. Did your wife come later, after you did?
A. She came almost a year later, for me.
Q. Did she go to this Hebrew—
A. The Hebrew Society took care and—

Mr. Hood:
Your Honor, we want our objection—

A. She came.

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Mr. Hood:
We don't see where all this has anything to do with this case.

The Court:
Counsel, getting back to the paper, suppose you were in another Court, and the clerk here, or some individual, or some society would certify you were a lawyer; unless it was the particular body that issued your license, and they sent a copy of that record, their certificate would be merely hearsay. If they sent a copy of the license, and certified to it, that would be admissible, but when they certify something, without sending the copy, it is not a copy, it is hearsay. If they had a copy of that sheet, or page, or that line, that showed that he entered the country, and that they gave him aid, that would be admissible, but that is not the thing that they offer.

Mr. Dailey:
If the Court please, for the purpose of the record, we except to the ruling of the Court.

The Court:
All right.

Mr. Dailey:
I believe that is all.

Re-Cross Examination.

By Mr. Hood:
Q. Just one other question, please. I just want to call the Court's further attention to this paper, that that says, they remarked down here, "we do not vouch that it pertains to the applicant".

The Court:
We have excluded the paper.

Mr. Dailey:
The whole thing?

(By Mr. Hood):
Q. What is your name?
A. Selcovits.
Q. This is a copy of the defendant's exhibit that he has offered. Do you mean to tell the Court that this man that is named in this exhibit, Defendant's Exhibit 1, who is described as five feet, five inches, complexion fair, light brown hair and gray eyes, is one and the same person as this defendant?
A. The same person that I see there.
Q. You say this is the same person?
A. I say he is the same person.
Q. I see. You follow my question?
A. I say this is the same person that came to my house in 1913.
Q. That is not the question I asked you.
A. That is the answer.
Q. He is the same person that came to your house?
A. In June 1913.
Q. I am not asking you that. I say, look at Defendant's Exhibit No. 1, which says "Schloime Vogel".
A. Schloime Vogel.
Q. Height five feet five, complexion fair, light brown hair, gray eyes. All right, now you see that.
A. Yes, I see that.
Q. Will you say that this defendant, Sam Fogel is one and the same person named in this Defendant's Exhibit No. 1 that I have just described?
A. If you say it is gray eyes, I don't know about that.
Q. Can you answer it?
A. I can't say that.

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Q. You can't answer that?
A. I can't say that, I have already—
Q. In other words, your testimony is you can't say he is one and the same person named in this defendant's exhibit?
A. My testimony is he came in June 1913 to my house.
Q. I see. But you won't say he is the one and the same person named in this Defendant's Exhibii No. 1 here, with these gray eyes?
A. I never thought—I never looked at his eyes, and I never know his eyes, and I never know what kind of hair he got, I never paid attention to that.
Q. Do you say he is the same man named in this Defendant's Exhibit 1 here?
A. I never looked at that page.
Q. All right, what does it say?
A. I didn't look at that paper, I looked at that man.
Q. I asked you to look at the paper?
A. I don't know about that paper.
Q. I asked you to look at the paper.
A. I'll look at the paper.
Q. Read it.
A. I'll read that.
Q. Read the description.
A. I'll read it.
Q. What does it say about the height?
A. The height is five, five.
Q. What does it say about the complexion?
A. It is brown—
Q. Fair?
A. Fair.
Q. What does it say about the hair? Light brown?
A. Light brown.
Q. What does it say about the eyes?
A. Red—gray.

Q. Gray?

A. Yes, sir.

Q. Will you say this defendant here is the one and the same person described in that exhibit?

A. I don't know about that paper, or who subscribed it, I only know this man.

Q. But, you won't say he is the man named in this Defendant's Exhibit 1?

A. I don't know about the paper, you want to talk about the paper, you want me to identify that paper, or identify the man?

Q. You say you know Sam Fogel?

A. Sam, Schloime Fogel, that is what I know.

Q. But, you don't know whether this paper—

A. I never seen the paper before, even when the FBI question me, I tell them about the same thing, he asked me about that.

Q. Are you any relation to him?

A. I am never any relation to him, he was just born in the same town with me, but no relation to him.

Mr. Hood:

That is all.

Re-Direct Examination.

By Mr. Dailey:

Q. Just one question, please, sir. Is S-c-h-l-o-i-m-e Vogel in Polish, the same name as Sam Fogel in English?

A. Fogel, yes, sir.

Re-Cross Examination.

By Mr. Hood:

Q. Where do you get the name "Hannah"?

A. Hannah, that is his mother's name.

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Q. That isn't on this exhibit, is it?
A. What?
Q. Sam Hannah Fogel.
A. Maybe he changed his name.
Q. I think he did too.
A. His mother's name, and took in his mother's name.

Mr. Dailey:
His mother's name was Hannah?

A. Hannah, yes, sir, was his mother's name.

Mr. Dailey:
That is all, thank you.

JOE FOGEL, called on behalf of the defendant, being first duly sworn, testified as follows:

76 Direct Examination.

By Mr. Dailey:
Q. You are Joe Fogel?
A. That is right.
Q. You testified in this case the other time?
A. That is right.
Q. I show you what has been designated as Defendant's Exhibit No. 1. Now, this shows, among other things, that S-c-h-l-o-i-m-e Vogel entered the United States June 30, 1913. Where did you live on June 30, 1913? June 30, 1913?
A. South Orkney street, 1613.
Q. 1613 South Orkney street?
A. That is right.
Q. Now, here it says the man who entered this country had a brother by the name of Josef, J-o-s-e-f (spell-

ing) Vogel, V-o-g-e-l (spelling). What is Josef Vogel named in Defendant's Exhibit No. 1?

A. I don't know, I am the only one he had here, and my name is Joe, and I sign it Joseph.

Q. Joseph Fogel?

A. That is right.

Q. And that is your name since 1913?

A. That is right, and my citizenship paper, Joseph Fogel, it being spelled with an "F". That is spelled here with an "F", and in Europe they spell it with a "V".

Q. You spell it with an "F" here, and in Europe you spell it with a "V"?

A. That is right.

Q. Defendant's Exhibit No. 1 says his brother sent for him. Did you send for—

A. Yes, sir.

Q. Sam?

A. Yes, sir.

Q. And it says here that the defendant, that the place of birth was R-o-s-z-y-n-y, Russia.

A. That is right.

Q. Is that where you were born?

A. Yes, sir.

Q. Is that where Sam was born?

A. That is right.

Q. And S-c-h-l-o-i-m-e, that is the first name, and V-o-g-e-l?

A. We called it.

Q. Is that one and the same name as "Sam Fogel"?

A. That is right, Schloime, the Hebrews, they call him Schloime.

Q. Schloime?

A. That is right.

Q. And they spelled it over there with a "V"?

A. I don't know how they spell it, but this is the name.

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Q. You say they would spell Vogel—
A. Vogel over there.
Q. With a "V" over there, and an "F" here?
A. That is right.
Q. What was your father's name?
A. In Hebrew or in English?
Q. I will ask you, this says here C-h-a-i-m.
A. Chaim.
Q. Chaim V-o-g-e-l?
A. Chaim Vogel.
Q. Chaim Vogel, is that your father?
A. That is right.
Q. Is that Sam Fogel's father?
A. That is right, and my mother's—
Q. What was your mother's name, first name?
A. Hannah.
Q. You mean Hannah?
A. Hannah.
Q. H-a-n-n-a-h?
A. That is right.
Q. The same name as he goes by, Sam Hannah Fogel?
A. That is right.

Mr. Dailey:
I believe that is all.

Cross Examination.

By Mr. Cantrell:
Q. Mr. Fogel, you told counsel a few minutes ago, you remember testifying in this Court room before in the trial of this Defendant, your brother?
A. Yes, sir.
Q. You testified a moment ago, I believe, that his name is S-c-h-l-o-i-m-e Vogel or Fogel?

A. Schloime Vogel.

Q. Do you recall in that other trial, when you were being questioned by Mr. Corenbleth, the attorney for your brother, the defendant here, when he asked you this question, referring to the defendant, Mr. Corenbleth said, "and his name, when you brought him in, was he brought in as Sam Fogel or some other name?" you answered and said, "no, it was Shlema".

A. Shlema.

Q. Shlema?

A. I am saying the same thing.

Q. Counsel, in answer to that, spelled it to you, he said S-h-l-e-m-a, and you said, "that is right".

A. I am sorry, I didn't go to college, and maybe I didn't spell it right, I am just an ordinary workingman, I am not expert in spelling, Mr. District Attorney.

Q. Now then, that was right there on the stand?

A. Yes.

Q. You said it was right; if you are right now you were wrong then?

A. No, I wasn't.

Mr. Dailey:

If the Court please, that is argumentative.

A. No argument to me, Schloime is Schloime, I am not so good educated in English, I take it for granted this is the same thing.

(Mr. Cantrell):

Q. You take lots of things for granted.

A. I am taking nothing for granted, here is my brother, I am taking nothing for granted.

Q. You are taking lots of things, if you are testifying—

A. You can't tell me he isn't my brother, he is.

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Q. When did your brother arrive in this country?

A. Well, I can't keep everything in my head, exactly honest, no, sir; I think it was June '13, if I am mistaken —if I am correct.

Q. What color were your brother's eyes when he came to this country?

A. I will tell you the truth, I never paid attention to my brother's eyes, never.

Q. What color was his hair?

A. It was black.

Q. What kind of complexion did he have?

A. Well, he looked the same thing as he looks now, but only a little younger, dark complexioned.

Q. The complexion the same as it is now?

A. Yes, only a little younger, with hair on his head.

Q. How tall was he, as compared to how tall he is now?

A. The same thing, he was the same size.

Q. Well, Mr. Fogel, if you did not notice what your brother's eyes were at age 20, or at the time he came to the United States, do you mean to say you would not notice their change now?

A. No, I don't know, I never looked in his eyes, because I never had occasion to look in his eyes.

Mr. Cantrell:

That is all.

Mr. Dailey:

That is all, Mr. Fogel, thank you.

The Court:

Mr. Fogel, one question for the Court. How many years had you been in the country when your brother came over?

A. Over a year, Your Honor, because I was here by myself, and I sent for him, and that is why I lived in this gentleman's house, and I sent for him because I was lonesome, homesick, as a young boy, and he came here.

The Court:
How much older are you than your brother?

A. About two and a half.

The Court:
Three and a half?

A. About two and a half, if I figure correct, from my papers.

The Court:
Did you come to this country by yourself, or with some other member of the family?

A. No, I came by myself.

The Court:
How old were you when you came?

A. In the twenties, twenty-one, maybe, around that, I have got everything here, I can't remember everything offhand.

The Court:
Do you remember the ship you came on?

A. I don't remember that, but it is in the citizenship paper, if I look it up.

The Court:
What port did you land at?

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A. Philadelphia, the same port, Snyder Avenue, Front and Snyder Avenue it is, I remember.

The Court:
That is all.

Mr. Dailey:
If the Court please, we introduce, we offer in evidence as Defendant's Exhibit No. 3, the transcript of the testimony offered by each and every witness that appeared here in the trial of this cause.

(The instrument referred to was marked Defendant's Exhibit No. 3 for identification, and is as follows:)

83 TRANSCRIPT OF PROCEEDINGS.

Filed March 11, 1947.

In the District Court of the United States, Northern District of Texas, Dallas Division.

United States of America
vs. No. 11,681 Criminal.
Samuel Hannah Fogel.

Be It Remembered that the above entitled and numbered cause came on to be heard before Honorable T. Whitfield Davidson, United States District Judge, on the 19th day of February, A. D., 1947, at which time the following proceedings were had:

Appearances:

Hon. Robert B. Young, United States Attorney, Dallas, Texas, by Hon. Clyde G. Hood, Assistant United States Attorney, Dallas, Texas and Hon. William Cantrell, Assistant United States Attorney, Dallas, Texas, appearing for the Plaintiff.

Hon. Emil Corenbleth, Hon. Sam Passman, Hon. W. B. Pope, all of Dallas, Texas, appearing for the Defendant.

84 PROCEEDINGS.

The Court:
Has the defendant been arraigned?

Mr. Hood:
I think he was arraigned previously, was he not?

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The Court:
Unless the reading is waived and the plea taken, I believe you had better present the information.

(Indictment presented.)

The Court :
Mr. Fogel, you are represented by counsel, and you understand the nature of this charge?

Samuel Hannah Fogel:
Yes.

The Court:
Is your plea guilty or not guilty?

Samuel Hannah Fogel:
Not guilty.

The Court:
Is the jury waived?

Mr. Corenbleth:
Yes, sir, the jury is waived.

The Court:
All right, let the evidence proceed.

GLENN A. TORRENCE, a witness called on behalf of the government, being first duly sworn, testified on his oath as follows:

Direct Examination.

By Mr. Cantrell:

Q. Mr. Torrence, state your full name?

A. Glenn A. Torrence.

Q. What is your position with the government, Mr. Torrence?

A. I am a naturalization examiner with the United States Immigration and Naturalization Service.

Q. Stationed here in Dallas, are you not?

A. Stationed in Dallas, Texas, yes, sir.

Q. Do you know Sam Hannah Fogel, the defendant in this case?

A. I do, yes, sir.

Q. I will ask you to state whether or not you had occasion to see him on or about February 7, 1946?

A. I did. At that time, he was given a hearing on his application for a registration of an alien, in our office.

Q. In that hearing, was he placed under oath?

A. He was.

Q. Did he, at that time, state his birth-date?

A. He did.

Q. What was that birthday, Mr. Torrence?

Mr. Corenbleth:

If the Court please, we are going to object to any statements made by Mr. Fogel to Mr. Torrence on February 11, 1946, being after the alleged crime has been committed, being an admission against his interests, and without any further showing than the government has here, we do not think it admissible evidence.

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The Court:

We will hear the evidence, and value it, or strike it, as it may be deemed correct by the Court, in the light of the objection.

(By Mr. Cantrell):

Q. State the date, at least, that Mr. Fogel said was his birth-date?

A. July 10, 1898.

Q. I will ask you to state whether or not, on another occasion, some time in September of 1946, you had occasion o tsee Mr. Fogel?

A. I did, on September 12, 1946.

Q. Did Mr. Fogel, at that time, make any statement, under oath, to you, concerning his birth-date, either reaffirming the previous date or any other?

A. At that time, a question and answer statement was taken of Mr. Fogel, under oath, and reviewing the application with him, the question was asked then, "Is all the rest of the information contained, those items just given, true and correct?" His answer was "Yes, sir." The other items were pertaining to his age.

Mr. Corenbleth:

If Your Honor please, we want our objection, the same objection, to go to this testimony.

The Court:

We assume the purpose of the testimony is to show the age of the defendant?

Mr. Cantrell:

That is correct, Your Honor.

The Court:

Overrule the objection.

(By Mr. Cantrell):

Q. For the purpose of clarity, I will ask you this question, Mr. Torrence: At that time, he reaffirmed the previous birth-date, I believe, as July 10, 1898?

A. That is correct, yes, sir.

Q. Mr. Torrence, I will ask you if, at any time in the course of your official dealings with Mr. Fogel, and I believe—I will ask this question first: In your records, he is shown to be an alien, is he not?

A. That is correct, yes, sir.

Q. In the course of your officials dealings with him, as an alien, and you as a naturalization examiner, did you have occasion to call on him to produce a registration card for selective service?

A. I did, yes, sir.

Q. When did that take place?

A. That took place on October 29, 1946.

Q. Did he produce one?

A. He did not.

Q. Whereabouts was that?

A. That was in our office in the Santa Fe Building.

Q. Here in Dallas, Texas?

A. Yes, sir.

Q. Then, it is your testimony that when you called on him for a registration card, for the draft, as we usually express it, Selective Service, he did not produce one?

A. No, sir.

Mr. Cantrell:

That is all.

Cross Examination.

By Mr. Corenbleth:

Q. Mr. Torrence, in your discussions with Mr. Fogel about his age, didn't he tell you that he did not know exactly how old he was?

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A. No, sir, he did not.

Q. Didn't he tell you he was born in a foreign country?

A. He did, yes, sir.

Q. And that when he came over, he did not know his age, but he thought he might be the age that you have mentioned here?

A. The application was submitted by Mr. Fogel, filled out by him, before it was submitted to us, and the date was given there, and at the time of the hearing, we reviewed the application with him, each question, and as I went through the application, the question was read, that he had shown Poland. However, we asked for a definite place of birth and he gave us at that time Racaz, Poland.

Then the next question is the date of his birth, July 10, 1898. And we reviewed that, and he gave no objection to that as being stated, it was his birth-date.

Q. The application you have there was not filled out in Mr. Fogel's handwriting?

A. I presume that is is filled out in Mr. Fogel's handwriting.

Q. Is it signed by him?

A. Yes, sir.

Q. Is the same signature as the rest of the application?

A. I believe it is the same signature, that he signed before me on the 11th of February, 1946.

Q. I mean, does the signature compare to the writing in the—

A. Yes, it does.

Q. Could I have just a moment? Did Mr. Fogel tell you Judge Royal Watkins had written this out for him?

A. No, sir.

Mr. Cantrell:

Your Honor, we are going to object to pursuing this line of testimony, we don't think it is admissible. It is clearly shown he swore to this

The Court:

We think the objection is well made, but there is no jury there, we will hear it. Go ahead.

(By Mr. Corenbleth):

Q. The purpose of this application for a registration of alien, is that one of the steps in naturalization?

A. It is, yes, sir.

Q. Is that what they call the beginning of the declaration of intention to become a citizen?

A. No, sir, a man, before he can file the declaration of intention, must establish legal entry into the United States. Mr. Fogel's entry into the United States has never been verified by our service, and this is to create a record of lawful entry, upon which he can pursue his application for naturalization.

The Court:

Let me look at the paper?

A. Yes ,sir.

(By Mr. Corenbleth):

Q. Has there ever been a declaration of intention filed, then?

A. No, sir.

Q. Mr. Fogel did register as an alien, under the alien registration Act, didn't he?

A. He did, yes, sir.

Q. Have you made any effort to verify whether Mr. Fogel's entry into this country was lawful?

A. Yes, sir.

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Q. Have you found out anything about that?

A. I found there is no record extant of his entry into the United States.

Q. Is it your testimony there is no such record?

A. That is the information furnished us by his claimed port of entry, I think it is Philadelphia, they have no record there of his entry into the United States.

Q. Mr. Torrence, did you check the Hamburg Lines in Philadelphia, when he was supposed to have entered here?

A. I did not, no, sir.

Q. Did anybody from your department?

A. I believe that was checked.

Mr. Hood:

Your Honor, we do not see the materiality of the lawful entry, we do not try him for not entering the country lawfully in this case.

The Court:

Unless it goes into some length, I will hear it. Go ahead.

(By Mr. Corenbleth):

Q. Do you have the ship on which Mr. Fogel came to this country?

A. Mr. Fogel says he doesn't remember the ship, I believe, he came, on which he says he came, only the Hamburg Line, and this application to file a declaration of intention was returned by our Philadelphia office, under date of August 22, 1945, stamped "Unable to verify, and the notation, "No definite statement of date of arrival". Note World War I, in 1914-1918, no German Passenger Ship arrivals then at Philadelphia."

Q. Mr. Torrence, does the log of a ship, or the records of a ship, on an immigrant, call for his age, listing of his age?

A. I believe it does. I am not able to state definitely at this time, I don't recall what all information is called for in the manifest.

Q. Have you had any experience with what is known as the Hias, that is known as the Hebrew Immigrant Aid Society of Philadelphia?

A. No, sir.

Q. And other portions of the country, who helped the immigrants coming into this country?

A. No, sir.

Q. Are you familiar with their records, and their connections, if any, as to the government of the United States?

A. No, sir.

Q. If I gave you the name of th ship, Mr. Torrence, that Mr. Fogel came into this countr on, would you be in a position to get the log and show his age when he entered this country?

A. I don't know that we can get the manifest, we can get an extract of the information appearing in that manifest, which would be an official record furnished by the Port of Entry.

Q. You could do that back in June of 1913, if that is the time that he came into this country?

A. Yes, sir.

Q. For your information, I would like to state that the evidence will develop that the ship he came in here on is the Maarian, of the Hamburg Line, and he arrived in the United States on June 18, 1913.

A. That is possible.

Q. I say, the evidence will develop and you can get the records of his age, at that time?

A. If there is a ship manifest showing his entry at that time, we can get it, yes, sir.

Mr. Corenbleth:

That is all.

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Re-Direct Examination.

By Mr. Cantrell:

Q. Mr. Torrence, one further question. At the time of any of these hearing you have testified to, Mr. Fogel had over there before you, did he state how long he had lived in Dallas?

A. Yes, I believe he said he came to Dallas in 1921, or '22.

Q. Did he state he had lived here continuously ever since?

A. He did, yes, sir.

Mr. Cantrell:

That is all.

Mr. Corenbleth:

No further questions, now.

Mr. Cantrell:

Will you step down, Mr. Torrence?

ALTON BRYANT, a witness produced on behalf of the government, being first duly sworn, testified on his oath as follows:

93 Direct Examination.

By Mr. Cantrell:

Q. You are Mr. Alton Bryant?

A. Yes, sir.

Q. Special Agent, Federal Bureau of Investigation, stationed at Dallas, Texas?

A. Yes, sir.

Q. Mr. Bryant, October, 1946, around about the 20th to 29th, somewhere along in there, did you have occasion to see Sam Hannah Fogel, the defendant in this case?

A. I did.

Q. State the occasion of that meeting?

A. I was called to the office of the Immigration and Naturalization Service by Mr. Torrence and Mr. Young, to talk with Mr. Fogel, in regard to his registration for Selective Service, inasmuch as he had not produced a card for them, sir.

Mr. Corenbleth:

If the Court please, we are going to object to anything, Mr. Bryant's testimony about being called there, and about being called there to talk to him. We think that has no place.

The Court:

We will hear the evidence.

(By Mr. Cantrell):

Q. Mr. Bryant, at that time, did you call on Mr. Fogel to produce a registration card for Selective Service?

A. I did.

Q. Was he able to produce one?

A. He was not.

Q. He did not produce it?

A. No, sir.

Q. When you asked him for it? Did you ask him also for a classification card?

A. I did.

Q. Did you have occasion, subsequently, to call on him at any time to produce a registration card?

A. I did.

Q. When was that?

A. It was the following morning, in our field office.

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Q. Here in Dallas, Texas?
A. Here in Dallas, Texas.
Q. Did you ask him at that time to produce a registration card for Selective Service?
A. I did.
Q. Did he produce one?
A. No, sir.

Mr. Cantrell:
Your witness.

Cross Examination.

By Mr. Corenbleth:
Q. He did produce an alien registration card, where he had registered as an alien in this country in 1940?
A. Yes, sir, he did.
Q. Under the Alien Registration Act?
A. That is right, yes, sir.
Q. He told you, didn't he, that he did not know how old he was?
A. That is right.
Q. What was it, exactly, he said about his age?
A. I asked him about his age, and he told me he did not know exactly when he was born, he was born in Poland, some city, I don't recall the name, in Poland, that he was born there, he did not recall the exact date when he was born, and we further tried to arrive at that time by the time at which he came to this country, about how old he was at that time, and about how long he had been here, and was unable to ascertain any satisfactory answers as to approximately when he came, as to how he came, where he came to, when he came to the United States, what port he entered, or any information about him, sir, at all.
Q. You did confront him with this statement that he was born July 10, 1898, didn't you?

A. I did not confront him with that statement. The best of his recollection, he told me that the best of it, it was something about 1895 or 1898, somewhere along in there the best he could possibly ascertain.

Q. Somewhere between 1895 and 1898?

A. Somewhere in there, the best he could remember, so he indicated.

Q. Mr. Torrence was present then?

A. No, sir, he was not.

Q. You had him by himself, then?

A. No, sir, he was not by himself, he was with his attorney, in my office.

Q. Mr. Pope was present then?

A. That is right, sir.

Mr. Corenbleth:

That is all. Thank you.

Re-Direct Examination.

By Mr. Cantrell:

Q. Mr. Bryant, just one further question. Do I remember your testimony correctly, when you interrogated Mr. Fogel, he was extremely evasive, is that your testimony?

Mr. Corenbleth:

We object to whether he was evasive, or what he was.

Mr. Cantrell:

I withdraw it, if the Court please.

The Court:

All right, the question is withdrawn.

Mr. Cantrell:

That is all.

A. W. TIPPETT, a witness produced on behalf of the government, being first duly sworn, testified on his oath as follows:

97 Direct Examination.

By Mr. Cantrell:

Q. State your name, please?

A. A. W. Tippett.

Q. Mr. Tippet, what is your official position with the government?

A. Coordinator, selective service, Dallas.

Q. You are coordinator of what, sir?

A. Called Group AA. There are two groups, Group AA.

Q. Two groups? Mr. Tippett, do you know the defendant, Sam Hannah Fogel?

A. I don't know him, I saw him in here, I don't remember seeing him before I know of.

Q. You do recognize that name, having heard it previously?

A. Yes, sir.

Q. In your official capacity, did you examine the records of the local selective service boards here in Dallas, to determine whether or not he is registered for Selective Service?

A. I did.

Q. Is he registered?

A. He is not.

Mr. Cantrell:

That is all.

Cross Examination.

By Mr. Corenbleth:

Q. Mr. Tippett, when you examined the records as to whether he registered, you are talking about No. 2 war, or No. 1 war?

A. No. 2 war, the Selective Service Act of 1940, as amended.

Q. Act of 1940, as amended.

A. Yes, sir.

Q. You did not inquire whether or not he had registered anywhere in the United States in the First World War?

A. No, I did not.

Q. Now, you were familiar with the presidential proclamation which required all persons who were born on or after February 17, 1907, and on or before December 31, 1921, to register on February 16?

A. Yes, sir.

Q. Were you in the Selective Service at that time?

A. Yes, sir.

Q. That was a date fixed certain for them to register, wasn't it?

A. That time, or if they fail to register at any subsequent date after that.

Q. Where did you get your information about that?

Mr. Hood:

Your Honor, we object to questioning this witness about the law, we think the Court will take judicial notice of that.

The Court:

Well, if counsel wants it, we will hear it.

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A. In the Selective Service rules and regulations, Section 611.

(By Mr. Corenbleth):

Q. Now, Mr. Tippett, according to the record that has been introduced by the government, Mr. Fogel would have been forty-five years old on July 10, 1942. Under that registration, you were taking them up to forty-five?

A. Yes, sir.

Q. Now, that was in February, 1942. Did you take anybody in the Army after February 2, 1942, after February 16, 1942, registering on that date, within those ages, who would have been forty-five in approximately four months thereafter?

A. Yes, sir.

Mr. Hood:

We object to that, Your Honor, for this reason. This man is charged for not failing to report to induction, but for having failed to register, and it is our position it is a continuing offense.

The Court:

There is no jury present, and I believe we will hear it, in the matter of sentence, in the event of such.

Mr. Hood:

Very well.

(By Mr. Corenbleth):

Q. What was your answer?

A. Yes, sir.

Q. How long would it have taken you to process a man that registered on February 16, 1942, to get him ready to go into the army?

A. Well, the man, when they reached the order number, it takes about thirty days.

Q. Well, if he had an order number, you would reach that order number in four months?

A. No, the regulations based it on the age at the time of registration; the regulation took into consideration a man could be forty-six when we reached him, if we inducted him.

Q. Would you take him?.

A. Yes, they would, because if you reached his order number, until we got instructions to keep from inducting them from 38 to 45, it was based on the date of his registration, February 16, 1942.

Mr. Corenbleth:

Thank you, Mr. Tippett, that is all.

Mr. Cantrell:

That is all, Mr. Tippett.

Your Honor, the government rests.

Government Rests.

Mr. Corenbleth:

Your Honor please, at this time, we desire to make a motion for acquittal, and with the Court's permission, I would like to state our grounds for it.

The first ground we have is that it is encumbent upon the government in a case of this kind, to prove, beyond a reasonable doubt, the age of the defendant. The only evidence offered here as to the age of this defendant, are his admissions, made after the alleged crime occurred, in accordance with the indictment. It is the rule, as we understand it, that admissions after a crime, are not proof of the corpus delecti, or proof of the crime, unless they are corroborated *ni* some manner. The only evidence before this Court right now is this declaration of his that he was born July 10, 1898; and in addition thereto,

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there is a statement of the FBI man that he did not know when he was born.

And I would like to call the Court's attention in that regard to a case, Zuzack versus United States in 119 Fed. (2) 140 which we think clearly sets out the rule that there isn't any evidence before this Court now upon which this defendant could be convicted because it has not been proven that he is within the age required to register on that date.

Our second ground is that it has been proven beyond the question of a doubt from the evidence introduced so far he has made no declaration of intention to become a citizen of the United States, and that, under the terms of the Act, itself, he was not required to register.

Our third ground for acquittal, goes back to the question of limitation.

The Court:

I will hear you a little further on the ground he was not required to register. That, if it is supported by the law, of course, ends the litigation, ends the controversy.

Mr. Corenbleth:

The Selective Service Act says, Section 302, Title 50, requires the registration of persons within certain ages, with certain exceptions. 305 sets out the exceptions, and then states that one of the exceptions, "And who have not declared their intention to become citizens of the United States shall not be required to register under Section 2," that is 302, and shall be relieved from liability for training and service under the Act.

The government, in many cases, has made a clear distinction between a person, an alien who has declared his intention, and those who have not declared their intentions, and as I read the statute, he would not have been required to register, because he had not made the declaration of intention at that time. I do not have any cases

present to support that. There is an opinion by the Attorney General, which goes to this matter, that is recited in here, but it is not clear, Judge, what he means by it, so far as I can understand, but I believe that under the wording of the very act itself—

The Court:
Let me see that paragraph?

Mr. Corenbleth:
These are the instructions on that point, here is the exception.

The Court:
It says, "Persons in other categories to be specified by the president." Would it not be necessary to show he was in some category that the president set forth, before this would apply?

Mr. Corenbleth?
Well, it hasn't been shown he was in some category that would exempt him under that.

Mr. Hood:
As a defensive matter, if he was himself in one of these exceptions shown; by the lack of it, we admit we have no showing—

Mr. Corenbleth:
You have shown he was an alien, and had not declared his intention to become a citizen at the time of this offense.

The Court:
Unless you have some interpretation of that paragraph by the Court of Last Resort, I think we will overrule

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your contention. It sounds at first as having the element of authority with it, but we do not believe it is there.

Mr. Corenbleth:
Could I complete my—

The Court:
Yes, go ahead.

Mr. Corenbleth:
Our next ground, I don't recall the number now, it would be on the question of limitations. The Court has already overruled—

The Court:
I want to hear you on this phase of limitation. According to the evidence, he became forty-five soon after the act went into force, requiring the registration. Now, then, after he became forty-five, is it your understanding that he was still required to register, and would it be a continuing offense, after he was forty-five?

Mr. Corenbleth:
Well, that is the point I was going to add to what had been said before.

The Court:
Go ahead. We held it was a continuing offense.

Mr. Corenbleth:
Now, under the evidence, it appears that even though it had been a continuing offense, so long as he was within the age, that on July 10, 1942, he became forty-five, and became beyond the age, and so. therefore, it could not have been a continuing offense any longer. Assuming it was a continuing offense in the beginning, in other words, the limitation must have begun to run under the

statute on July 10, 1942, and that is more than three years, and so, even though the Court has held it was a continuing offense, under the evidence now, we raise the question again, because the evidence shows it could not have been a continuing offense after July 10, 1942.

I might say to the Court, if the Court will permit, that the Miller case, decided by Judge Atwell, and the Gurtner case, that the Court referred to, are cases which don't, upon examination, hold that it is a continuing offense. Judge Atwell, in the Mliler case, as the Court will recall, had before him the question of whether a man was inducted into the army, because he had not taken the oath of allegiance, although he had served in the army for three years, accepted the pay and had become a Sergeant, using the franked envelopes and doing everything the army wanted him to do. At the end of three years, for some reasons, he filed an habeas corpus before Judge Atwell, asking to be released, and in his application he said, "I did not take the oath, which was a violation of the law, but it is more than three years." Now, Judge Atwell promptly held he could not grant the habeas corpus, because he was under the jurisdiction of the army, and had been inducted. That is what Judge Atwell held, except he did put this sentence in there, "Under the Selective Service, it would be a continuing offense."

Now, under the Gurtner case, it was a continuing offense, because the Act itself provides if you register, you must keep the Board advised of a change of address, and during all the period of this registration, it is a duty, and so provided for in the law, to keep it advised, and the Defendant did not keep them advised, and they held it was a continuing offense.

But, in this particular case, there is a proclamation by the President of the United States, just as specific as anything can be, that on one day you register, it doesn't say you can register after that, it doesn't say that you can

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say that you can continue, any time you want to. And, furthermore, if the Court please, we are not charged here with any violation of the law after February 16. Had it been a continuing offense, then they should have taken the last date of that offense, and charged us here, and it probably would not have been behind the limitation, but the President of the United States says, register on one day, that is the date we violated.

The case I cited this Court is specific on that. These other cases are not specific on that point.

Assuming, as I stated before, if we are in error, it is not a continuing offense, it cannot be a continuing offense, if he became of age, he has got to reach forty-five.

Now, that is the question I want to hear you discuss. In other words, the thought is this, when he had reached his forty-fifth birthday, he was not to have performed the act of registering. Now, his having failed to do that, was the opportunity still held open to him, under the law, to still register, although he had passed the age, and was it made his duty to register nunc pro tunc, as it were, back at the original date?

Mr. Corenbleth:

There is nothing in the Act, Your Honor, that says that is so, that would be a very strange construction on when the crime was committed. Limitation commences from the commission of the offense. And, to say that he could, nunc pro tunc, go back and register, suppose he had registered in 1946, for instance, or sometime, 1945, or 1946, which would have still been the violation for not having registered on the 16th of February, that would not help him any. And if it was a continuing violation, Judge, this is the sort of preposterous position we would be in, that is, for every day after February 16, he did not register was a separate offense.

The Court:

As we understand the administration of this Act, the way that it was treated, now, whether the law justifies it or not, we don't know, but there was a rather magnanimous, a charitable construction put on the law, that if a man came in, had failed to register, and it happened maybe he was somewhere, and did not know it was his duty, maybe he was a man that did not read the newspapers, and lived in some remote place, he was always given a chance to register, even though he was late in doing so. Now, whether or not the law warranted that procedure is another question.

Mr. Corenbleth:

Let me call your attention to one other thing, Judge. It may be of some interest. The proclamation of the president says he must register on a certain date, between certain hours. Now, it is an interesting thing, in the Zuzack case, it was the trial of a man that failed to register. Here is what happened to that man. The fellow was in jail, he could not register on that date the president said. What happened? This proclamation by the President, that those persons who are in jail, or crazy, or incarcerated, something of that kind, must register the day they are released, and Zuzack, who was in jail, failed to register on that day he was released from jail.

That is that case in 119 Fed (2) 104. So, there wasn't that exception in our case. And, in order to convict this man, that is, in order to stop the statute of limitations from running, which is a federal statute, there must have been a specific statute, or a specific proclamation, stating this thing runs on, and we don't have it in our case. And, certainly, after July 10, 1942, it would be very far fetched in my judgment, to say that from then on, even though his time was up for registering, that limitation did not run against him.

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The Court:

What is your understanding of the law—it might not be decisive on that question in the case, but suppose he had appeared on that date, and had been inducted into service, would he, automatically, have been discharged from the service when he reached forty-five?

Mr. Corenbelth:

I don't think so, Judge.

The Court:

It is the Court's idea he would have gone on serving.

Mr. Corenbleth:

I think so, I think experience showed that men who were over forty-five, it would be better to discharge them, but I don't think it is automatic. I have two ex-service men associated with me here, that went through the war in foreign countries, and they, maybe, can answer that question better than I. I was in the first one, but not the second one.

The Court:

All right, we will hear from the District Attorney on the question as to whether or not it was a continuing offense, taking into consideration that he passed the age of registration at forty-five.

Mr. Cantrell:

Yes, sir. Might I correct one thing that is obviously in error, Your Honor. Fogel would not have been forty-five years of age on July 10, 1942, he would have been forty-four years old.

Mr. Corenbleth:

That is right, he would have been forty-five on July 10, 1943, I beg your pardon, and still the three years had gone, that is right.

Mr. Cantrell:

Now, Your Honor, while we point out here the mere fact he arrived at the age of forty-five, would that excuse him, because under the regulation—

The Court:

Let me ask you about this. It has just come to my mind the Act, Section 302, covers the ages from 18 to 65.

Mr. Cantrell:

Yes, sir, Your Honor. Why, in this Courtroom at the moment, Your Honor, here is Mr. McCormick, who is older than this defendant. There is Mr. Young down there, he is older than this defendant, he registered. Everybody up to 65 registered, and when he failed to register back there, he then set up a duty, at that time, by the presidential proclamation, from then on, up to the present time, he had the duty of registering, and he never has registered. He has been in violation of that, and it has been a continuing offense from that moment up to the present time. And, there is no question in our minds at all, sir, that a mere change in status there, age 43, did not relieve him of the duty of registering. It is under the President's power to prescribe regulations. Regulations were prescribed. They required him to come in at the first possible opportunity and register.

I might call Your Honor's attention, again, to 611.5, of the Regulation, paragraph D, it states:

"The duty of every man subject to registration to present himself for and submit to registration shall continue at all times, and if for any reason any such man is not registered on the day fixed for his registration, he shall immediately present himself for and submit to registration before the Local Board, in the area where he happens to be."

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Now, that, Your Honor, is our position all the way through on this, that he is still in violation of the law, for not registering. His offense is still going on.

Now, under 611.2 of the regulation issued pursuant to the President's power, under the Act, reads as follows:

"Except as otherwise provided in Section 611.2-1, every man who would have been required to be registered on a day fixed for registration by Presidential Proclamation, except for the fact that he was in one of the groups mentioned in Section 5(a), Selective Training and Service Act of 1940, as amended, or Section 208, Coast Guard Auxiliary and Reserve Act of 1941, shall be required, under the provision of Section 5(h) of the Selective Training and Service Act of 1940, as amended, to present himself for and submit to registration before a local board, when a change in his statue removes him from such group."

So, he had the duty when he became the age of forty-five, to come in and register.

The Court:

The interpretation of the Act, if he had been fifty, wouldn't he be required to register?

Mr. Cantrell:

Yes, sir, that is exactly the situation, Your Honor.

Mr. Corenbleth:

If the Court please, the Act says 18 to 65, but there were certain dates when certain groups had to register.

What we are charged with here is failure to register, in that section, on February 16, 1942, it is twenty-one and forty-four, twenty-one and forty-five, that is what we are charged with in this indictment.

Later on, there were several proclamations by the President, telling which group to register. The general Act covers them all, but the proclamation of the president fixed a date certain, is the date anybody has to register in that age limit, there are different dates.

What we are concerned with here is the violation alleged in the indictment. Let's assume Fogel was fifty years old in 1942. Maybe he should have registered at some other date, under some other age bracket, under some other proclamation of the President of the United States.

What we are charged with here is failure to register under this proclamation, that he was under age, that he was under 45, and when he became 45, he would not have to register under this Proclamation.

Mr. Hood:

Your Honor, he is charged with failure to register under the Selective Service Act and Regulations, regardless of whether he is thirty-five, forty-five, or sixty-two, that is the gist.

Mr. Corenbleth:

The gist of the indictment is, he failed to register on February 16, 1942, under the proclamation of the President, that is the gist of it.

Mr. Hood:

I might also state regulation 611.13, sets forth exceptions on aliens, and it is our position he does not come within the exceptions. If the Court would like to see it, I will be glad to pass it up.

Another point, Your Honor. about that limitation, the governing of it by the date pled in the indictment, if the facts in evidence show the offense was committed within the statutory period, why, we have made out our case. This offense is going on right now, he has not

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registered yet. If he can show us where he registered under the Act, well, we will move to dismiss this case.

The Court:
Overrule the motion for directed judgment.

Mr. Corenbleth:
Note our exception.

JOSEPH FOGEL, a witness produced on behalf of the defendant, being first duly sworn, testified on his oath as follows:

113 Direct Examination.

By Mr. Corenbleth:
Q. State your name to the Court?
A. Joseph Fogel.
Q. Where do you live, Mr. Fogel?
A. Philadelphia.
Q. How long have you lived there?
A. For as long as I entered.
Q. Well, when was that?
A. It is about thirty-four years.
Q. You are the brother of the defendant in this case, Sam Fogel?
A. That is right.
Q. Are you a man of family?
A. Yes, sir.
Q. What does your family consist of?
A. Three boys.
Q. Are you a citizen of the United States?
A. Yes, sir.
Q. A naturalized citizen?
A. Yes, sir.

Q. When were you naturalized?
A. In 1919—1914.
Q. When did you get your final papers? Do you have them with you?
A. I have got it with me.
Q. All right. That is all right.
A. Right here.
Q. What is the date it shows as to your final naturalization?

Mr. Hood:
I do not see the materiality of going into this man's—

The Court:
It may be a prelude to some other matter. We will hear it at present.

A. I became a citizen in 1919, that is when I got my papers.

(By Mr. Corenbleth):
Q. How old were you when you became a citizen of the United States?
A. Twenty-eight years.
Q. When did you come into this country?
A. '21.
Q. 1921?
A. That is right, to this country.
Q. When you were twenty-one?
A. When I was twenty-one years of age.
Q. Well, what year would that have been?
A. That was in 1912.
Q. Where did you come from?
A. From Poland, what at that time was Russia, it was under Russian control, but it was Poland.
Q. What was the name of the town you came from?
A. Recaz.

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Q. Would you know how to spell it?

A. I wouldn't know, it is too big a name, I suppose it is in this paper.

Q. What did your mother and father's family, so far as you children were concerned, what did it consist of in the old Country over there? How many children were there?

A. Seven.

Q. How many boys and how many girls?

A. Three boys and four girls.

Q. How many of you children, including yourself, immigrated to the United States?

A. Me and a sister of mine.

Q. And Sam?

A. And Sam. I sent for Sam.

Q. What happened to the rest of your sisters and brothers?

A. They got killed in this war.

Q. There are just three of you left at this time?

A. That is all.

Q. Now, you stated when you came to this country in 1912, you were twenty-one years of age?

A. That is right.

Q. There are three left, including yourself?

A. There is me and Sam, is only two left.

Q. Your sister died in this country?

A. My sister died in this country.

Q. You said you came to this country in 1912, and you were twenty-one years of age?

A. That is right.

Q. Where did you settle?

A. In Philadelphia.

Q. Did you send for Sam Fogel?

A. Yes, sir.

Q. About what time did you send for him?

A. Oh, a few months after I was in the country, I thought I would bring him over.

Q. And how did you send for him?

A. I sent through a Philadelphia office to a bank, I sent the tickets for him.

Q. Did you make any reports to anyone, had to fill out any papers with reference to his coming?

A. I gave a statement as to his age, and where he was located, and all these little things that was necessary at that time.

Q. How old was Sam when you sent for him, Mr. Fogel?

A. He was close to twenty.

Q. And when did he arrive in this country?

A. He arrived here June 18.

Q. Of what year?

A. 1913.

Q. And did he come to live with you?

A. Yes, sir.

Q. Were you single at that time?

A. Yes, sir.

Q. How soon after that did you get married?

A. Oh, I got married right the next year, 1914.

Q. And did he live—was he at your wedding?

A. Yes, sir.

Q. Did he live with you for awhile?

A. Yes, sir.

Q. And then where did he go?

A. He went to Texas, after he left Philadelphia.

Q. What year would that be?

A. I couldn't recall the exact time, but it must have been around 1915, or 1916, I don't know, when he went straight to Texas, I don't know, either.

Q. Mr. Fogel, day before yesterday we got in touch with you and asked you to come down here, didn't we?

A. That is right.

Q. Did you endeavor to determine or find out whether there had been any record made of the age of Mr. Fo-

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gel, and the date of his entry in, which you had had made at the time you sent for him?

A. Yes, sir, there is.

Q. Where did you find that record?

A. In the—I believe it is the organization that come before, the Hias, then in Philadelphia.

Q. That is H-i-a-s (spellling)?

A. He arrived in 1913.

Mr. Hood:

We object to this testimony, Your Honor, the record would be the best evidence.

The Court:

All right, we will sustain the objection.

(By Mr. Corenbleth):

Q. Did you go and examine those records?

A. Yes, sir.

Q. Did you request that they permit you to bring those records here?

A. Yes, sir.

Q. And what were you told?

A. They told me that the government rules is they are not allowed to give out that record on anybody, to individuals, unless it is Court order.

Mr. Hood:

We are going to object to this hearsay testimony, what they told him, Your Honor, there is a manner or means of bringing documents here by process of this Court.

The Court:

I will sustain the objection.

Mr. Corenbleth:

If the Court please, all of this falls under the exception to the rule, I am not trying to prove his date of birth and I might say to the Court frankly, that until yesterday we did not know there was a written record tying Mr. Fogel here with this organization in Philadelphia, and had been there since 1913, which would make it an ancient instrument, but the witness here examined that record made at his direction, kept by the Hebrew Immigrant Aid Society in Philadelphia, and requested that they permit him to bring that record here.

We learned all of that yesterday, and they said they had to have a Court order, because they had some sort of connection, whatever it may be, I don't know, with the Government. In those old days, they kept the record of all of these people who were coming in, and they arranged for them, sometimes, they still do. It is a National Charitable Organization, been in existence many, many years, and it has offices in many parts of the United States, and the witness went there and examined the records that were made at his suggestion in 1913.

The Court:

It is almost a matter of common knowledge, Counsel, that any concern that keeps records will not send them promiscuously over the country, and when they refuse to go, that a person might testify to what their contents might be with notice, at least as in this case, and that no application was made for postponement of the trial in order to get these records. Why, we will have to sustain the objection.

Mr. Corenbleth:

Note our exception.

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(By Mr. Corenbleth):

Q. Mr. Fogel, when you were in the old country, you say you were twenty-one when you came over here, you and your brother, and the rest of your family lived together over there, did they not?

A. Yes, sir.

Q. How much difference in age was there between you and your brother, Sam?

A. Around two and a half years.

Q. How much?

A. About two and a half.

Q. About two and a half years. Did you play with him, and go around with him?

A. Yes, sir.

Q. Raised with him?

A. That is right.

Q. How do you know that there were about two and a half years difference between your ages?

A. That is what my mother used to tell, we were about fifteen months apart, and one died in between, and there was about two and a half years, that is the way our parents told us all the time.

Q. When Mr. Sam Fogel—when you left Russia, which is now Poland, to come over there, was he a grown man?

A. Yes, sir.

Q. Was he a grown man when he came here?

A. Yes, sir, he used to go out with me at the same time, so he must have been grown, both—

Q. You mean in the old country?

A. That is right.

Q. Do you know the name of the ship that he came here on?

A. Yes, sir, Maaian.

Q. Is that the Hamburg Line?

A. That is right.

Q. Where did he land?

A. Philadelphia.

Q. And his name, when you brought him in, was he brought in as Sam Fogel or some other name?

A. No, it was Shlema.

Q. S-h-l-e-m-a (spelling) Fogel, I suppose?

A. That is right.

Q. That means Sam?

A. Yes, sir.

Q. When he came here, he changed it to Sam?

A. That is right.

Q. All of these matters as to his age, which you are testifying to, now, do you have an independent recollection of it, do you not?

A. I have what?

Q. You have an independent recollection of that that is his correct age?

A. That is right.

Q. And you did go to these records and refresh your memory from them also, did you not?

A. That is right, I did it myself.

Mr. Hood:

We are going to object to that, Your Honor. Counsel is going at it another way, trying to get in those records, we object to it, he did it purposely.

The Court:

We will sustain the objection.

(By Mr. Corenbleth):

Q. How do you know, Mr. Fogel, that you were twenty-one when you left, about twenty-one when you left Russia or Poland?

A. Well, we didn't know exactly what—you, in Russia at that time, had to go to service.

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Q ..ad to go to service in the Russian Army?

A. In the Russian Army, so I left four weeks before I had to go there, so I was twenty-one years of age, that is the only way we could remember it.

Q. In the old Country, they actually kept no exact date of birthdays, did you?

A. No, we didn't know it.

Q. You stated Mr. Fogel was a grown man while you were over there in Russia?

A. Yes, sir.

Q. Did he shave or have a beard, or anything like that?

A. We didn't shave so often, but when he went with me to the barber and shaved with me at the same time.

Mr. Corenbleth:

That is all.

Cross Examination.

By Mr. Cantrell:

Q. Mr. Fogel?

A. Yes, sir.

Q. Are you the full brother of this defendant, Sam Hannah Fogel?

A. Yes, slr.

Q. You testified just a moment ago, I believe, that you were about some birth date, which would make you about fifty-five or fifty-six, is that right?

A. About fifty-seven. In October I will be fifty-seven.

Q. Fifty-seven? What business are you in?

A. I am a working man, working for a firm.

Q. What kind of a firm?

A. For Outward Clothes.

Q. Well, what do they do, what kind of business?

A. Men's Clothing.

Q. Men's Clothing?
A. That is right.
Q. Do you have a registration for Selective Service card with you?
A. I haven't got it with me.
Q. Did you register for Selective Service?
A. I think I did.
Q. You don't know?
A. Yes, sir. You mean forty-five age, or the second one?
Q. I am just asking you if you have a registration card showing that you registered for Selective Service?
A. Yes, I do.
Q. Do you have it with you?
A. I think I do. Yes, I have got it with me.

Mr. Corenbleth:
He has it there.

A. This is my Social Security Card.

(By Mr. Cantrell):
Q. You hand it to me, if you will?
A. I haven't got the card with me.

Mr. Hood:
You have got to speak out, the reporter can't hear.

A. I don't have the registration card with me, but I did register.

(By Mr. Cantrell):
Q. Read that card to the Court?

Mr. Corenbleth:
What card is that you asked him to read?

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Mr. Cantrell:
Well, he produced it as the Registration under Selective Service, I want him to read it.

Mr. Corenbleth:
If it is not the card, I don't know whether he has to read—

(By Mr. Cantrell):
Q. Just let the record show it is not a registration for selective service.
A. I did, too, register.
Q. Did you know it was a violation of the law not to have a registration for Selective Service, Registration card, on you?

Mr. Corenbleth:
I object to that.

Mr. Hood:
Your Honor, I think—

Mr. Corenbleth:
He doesn't have to answer it until the Court passes on it, fortunately.

The Court:
I will sustain it.

(By Mr. Cantrell):
Q. Very well. I won't pursue that line any further. I will ask you this, Mr. Fogel. You testified a few moments ago you left Russia to avoid serving in the Russian army. Did you serve in the American Army at any time?
A. When?

Q. Any time?
A. I was registered in the last war.
Q. I asked you, did you serve in the army?
A. No.
Q. You were not in the first world war?
A. No.
Q. You were not in the second world war?
A. No.
Q. You left Russia to avoid serving in the Russian Army?
A. That is right.
Q. That is right, isn't it? I will ask you once again, I didn't hear you. Neither of government's counsel heard clearly what you testified about the name of that ship that your brother is supposed to have come over here on?
A. Maaian.
Q. How do you spell it?
A. Well, maybe I didn't spell it right, but this is the way I copied it from the book?
Q. That is the way I asked you?
A. I copied it down here, here it is in the paper.
Q. You just tell us how you spell it?
A. I have got it here M-a-a-i-a-n (spelling), Maaian.
Q. Is it your testimony that that is a Hamburg American Line ship?
A. Yes, sir.
Q. I will ask you further what date did you say your brother entered the United States on?
A. June 18, 1913.
Q. June 18, 1913?
A. That is right.
Q. I will ask you if you are familiar with your brother's handwriting?
A. Not much.
Q. You don't know his handwriting?

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A. No, I am not much around him, he is away all these years.

Q. Do you correspond with him, write letters back and forth?

A. Not so often. Once in awhile.

Q. Have you a letter addressed to you in his handwriting? Wouldn't you recognize his handwriting?

A. I haven't got no letter here with me.

Q. I say, would you, if you saw one come in to you, in the leter, wouldn't you recognize it?

A. I wouldn't, I don't pay any attention to the mail, because my children take care of it.

Q. Now, just one further question?

A. Here is my registration card from the government.

Q. All right, let's see it. It is registered on the 27th day of April, 1942. Just read that right there, showing that Joseph Fogel registered on this date, just read it?

Mr. Corenbleth:

Are you offering the card?

Mr. Cantrell:

Just let him read it in, that is enough. I asked him about it. I think in fairness to him—

Mr. Corenbleth:

It shows he registered on the 27th day of April, 1942.

Mr. Hood:

That is what he said, we want to show he isn't violating the law, too.

Mr. Corenbleth:

Joseph Fogel registered under the Selective Service.

Mr. Cantrell:
That is all.

Re-Direct Examination.

By Mr. Corenbleth:
Q. You were not in the last war, but you had sons in it?
A. This war.
Q. I am talking about this war. One of them served twenty-five missions over Germany and was shot down?
A. That is right.

Mr. Corenbleth:
That is all.

Re-Cross Examination.

By Mr. Cantrell:
Q. Did he volunteer or was he—

Mr. Corenbleth:
We object.

A. Yes, sir; yes, sir.

Mr. Cantrell:
That is all.

Mr. Corenbleth:
That is all. Did you get the card back? Just one moment, if the Court please. We rest.

Mr. Cantrell:
That is all the government has to offer, Your Honor.

Testimony Closed.

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Mr. Dailey:

Now, if the Court please, as indicated the Court would allow me to do at a later date a certified copy of this man's registration, under the Selective Service Act of World War I at Waxahachie, Texas, the defendant rests. And we would like, if the Court please—that will be all that we will have, all that I will have—I would like for the Court, after he hears the government's case, to continue it for further hearing, until I can receive that paper.

In that connection, if the Court please, to show our diligence in the matter, I wrote, as soon as this case was remanded to this Court, to carry out the Court's orders and judgment, I wrote to the War Department for this instrument. In the meantime, I had gone to Washington to the Attorney General's office, and we had a conversation there, the Assistant Attorney General and I, and they said to request it in writing, and it would be sent. Well, immediately, when this case was sent back, as soon as I could file a motion—the rule itself says that where a case has been appealed, that this Court cannot consider it, except it be remanded, that day I wrote a letter, the same day, an air mail, up there for this request. And then, a day or two later, I wrote another letter up there, and no answer. And then, I wired up there, and did not get any answer from that. Then, we wired again, and they said that the request had been turned over to the Director of the Census. Then, dated yesterday, I finally had a wire from J. C. Capt, Director of the Census, in which he says, "No record of request for information from World War I draft registration about Sam Fogel; necessary you send one dollar for a copy of the information, or if you want certified copy send three dollars."

Immediately when that was received, we sent, wired this man, Director of the Census, Mr. J. C. Capt, Director

of the Census, and said, "Re telegram November 10th, with reference Fogel arrival certification, please air mail certified copy at once."

Now, we have not received that copy. But, of course, we spoke to Your Honor, that went out Saturday—I mean, went out yesterday.

The Court:

Now, the document that you want is where he registered during World War I?

Mr. Dailey:

Yes, sir.

The Court:

Now, do you have any documentary evidence as to his arrival, arrival in the United States, except this Protective Society? Have you got anything from any Port Authority?

Mr. Dailey:

Yes, sir, the government, Your Honor, Defendant's Exhibit No. 1, is an official copy. This is, if the Court please, a copy, or a certified copy in the possession of the immigration authorities.

The Court:

All right.

Mr. Hood:

Is that all?

Mr. Dailey:

We understand the Court will hold it open a reasonable time to receive that.

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The Court:
I think we announced we would hold it open until Friday.

Mr. Dailey:
What is today? Wednesday?

Mr. Hood:
Wednesday.

Mr. Dailey:
Your Honor, you know the War Department up there, but we have done everything we could.

The Court:
All right, if you have not got it Friday, you can apply for an extension.

Mr. Dailey:
Yes, sir, thank you. I will say this, Your Honor, that I don't know the age that was given when he registered for World War I, but I will give the Court the benefit of it, whatever it is, when it arrives.

JOHN PATTERSON WALKER, JR., a witness called on behalf of the government, being first duly sworn, testified as follows:

131 Direct Examination.

By Mr. Cantrell:
Q. You have been sworn, have you not, Mr. Walker?
A. Yes, sir.
Q. State your full name.
A. John Patterson Walker, Jr.

Q. Mr. Walker, what is your occupation?

A. Vice President and Secretary of the Southland Life.

Q. In that capacity you were subpoenaed to come here, and bring certain files and records of that company?

A. Yes.

Q. Do you have them with you?

A. Yes, sir.

Q. What are those files?

A. They are what we term as our application file, it contains the originals and all correspondence, examinations and so forth in connection with the issuance of life insurance policies or annuities.

Q. To whom do they relate, these particular files?

A. These particular ones relate to Samuel Hannah Fogel.

Q. All right. Is that the Sam Hannah Fogel, the defendant that is on trial, in this case now?

A. That I don't know, I assume that is it.

Q. What is the earliest application for a policy which you have there?

A. March 9, 1927.

Q. All right, now, does that anywhere on it, sir, show an address?

A. At that particular time he gave his address as the Sanger Apartment, in Dallas.

Q. I see. Does it give any information where he was born?

A. He was born in Melva, Poland, under date of July 10, 1898.

Mr. Dailey:

Now, if the Court please, we object to this, and for the purpose of our objection, I would like to ask the witness a question on voir dire.

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The Court:
Very well.

Mr. Dailey:
Did you, yourself, take this application from Mr. Fogel?

A. No.

Mr. Dailey:
Did you see him sign that application?

A. No.

Mr. Dailey:
Do you know his handwriting?

A. No.

Mr. Dailey:
Would you say that the man who signed that application there is this man over here?

A. Only from having seen him in our office.

Mr. Dailey :
You don't know his signature, do you?

A. No.

Mr. Dailey:
He didn't sign that application in your office, did he?

A. I don't know.

Mr. Dailey:
And you don't know, in so far as you are concerned, you don't know whether Sam Hannah Fogel signed that application, or not, do you?

A. No.

Mr. Dailey:
We object to this testimony, if the Court please.

Mr. Hood:
Your Honor, it is signed on there, and in our opinion, it is the signature of Fogel, and we offer it for what weight the Court sees fit to give it.

Mr. Dailey:
We object to it.

The Court:
It is a record made in the due course of business?

A. Yes, sir.

The Court:
Your purpose is to show it does refer to this man, Mr. District Attorney?

Mr. Cantrell:
Yes.

The Court:
All right, we will overrule the objection for the present.

Mr. Dailey:
Note our exception, please, sir.

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(By Mr. Cantrell):

Q. Do you have here in this file, Mr. Walker, an assignment of the policy?

A. Yes.

Q. What is the date of that, please, sir?

A. The date of that is March 25, 1947.

Q. And that is at Dallas, Texas?

A. Yes, sir.

Q. How is it signed?

A. It is signed "Sam Hannah Fogel".

Q. All right, does that have to do with this application, or policy?

A. Yes, it has to do with the policy that was issued as a result of the application.

Mr. Hood:

Will you withdraw that assignment and application from your file, please. Your Honor, if there is any dispute as to whether or not this is the signature of this defendant, we want to introduce, or propose to introduce a lot of correspondence that was written by this defendant, in connection with these policies, and showing it is his signature, and we will put on an expert witness, if necessary, to establish that fact.

Mr. Dailey:

I object to it, Your Honor, in its present state.

The Court:

All right, let the Government proceed.

(By Mr. Cantrell):

Q. Will you, please, sir, state your next policy for which you have an application?

Mr. Dailey:

To save the Court's time, my objection goes to all these policies, your Honor.

The Court:

Yes.

Mr. Dailey:

And may be so considered?

(By Mr. Cantrell):

Q. Look at that application, and state when it was made.

A. July 30, 1927.

Q. By whom?

A. S. H. Fogel.

Q. Does he say what his full name is?

A. Sam Hannah Fogel.

Q. Does he recite where he was born?

A. Melva, Poland.

Q. Where does he reside?

A. The 10th of July, 1898.

Q. That is when he was born. That shows where he resided?

A. At Sanger Apartments, in Dallas.

Q. Does that show him employed by anybody?

A. Southern Industrial Corporation, which he gave, as vice president and general manager.

Q. He stated he was vice president and general manager?

Mr. Dailey:

If the Court please, just a minute, I want Mr. Selcovits to retire from the Courtroom, I may want to use him again, I see him sitting here, I may want to use him

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further, if the Court please, and I would like for him to retire.

Mr. Cantrell:
You have got another witness over there. Isn't that another witness there?

Mr. Dailey:
Yes, you retire, too, Mr. Fogel.

(By Mr. Cantrell):
Q. All right, do you have an assignment in that case?

Mr. Hood:
Mr. Cantrell, we want to try to keep these straight, now, if he is denying his signature. Here is an instrument I extracted from the file, that P. P. Ballowe, a lawyer of this City, took his acknowledgment to this first policy, and this is a canceled policy, showing he has a brother, Isadore Fogel. We want to put all that in.

Mr. Cantrell:
If you will just withdraw the application, I think that will be enough in this one.

Mr. Hood:
Would you mind telling the young lady to call P. P. Ballowe, and tell him we are going to issue a process, and tell him to come up as a Government witness?

Mr. Dailey:
Mr. Young, just a minute, if Mr. P. P. Ballowe will state to Mr. Hood and me that he took this acknowledgment, and that Sam Hannah Fogel did sign it, why, we will withdraw our objection to its entry.

Mr. Cantrell:
Will you withdraw your objection as to all of these?

Mr. Dailey:
No, just as to the one that P. P. Ballowe—

Mr. Cantrell:
We might as well put P. P. on.

Mr. Dailey:
I believe we can get together on that, if it is one and the same signature as the one that was acknowledged before P. P. Ballowe, then we will withdraw our objection to the introduction.

Mr. Hood:
I have in my hand, in connection with the first application, as mentioned in the record before—

The Court:
An assignment of all of the insurance?

Mr. Hood:
Of the insurance.

The Court:
All right.

Mr. Hood:
That this witness testified to as an assignment of life insurance, that signed by Sam H. Fogel, this 24th day of March, 1943, and the acknowledgment taken before P. P. Ballowe, a notary public of this city. Mr. Dailey knows him well, and so does Your Honor.

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Mr. Dailey:
If Mr. Ballowe will tell Mr. Hood, and Mr. Cantrell and me that Sam Hannah Fogel signed this in his presence, and that he executed the Notary Certificate, then my objection will be withdrawn.

Mr. Hood:
I don't know whether he will tell us that until we subpoena him. Go ahead, if you don't mind, and tell them to call Ballowe, and have him come over. Are you having those marked now, as we go along?

Mr. Cantrell:
I haven't yet.

Mr. Hood:
Where is the first application?

Mr. Cantrell:
You have it there.

Mr. Hood:
No, I have not. Well, have them marked. Will you mark this? Is this your first application?

Mr. Cantrell:
Yes, that is the first one.

(The instrument referred to was marked Government's Exhibit No. 1 for identification.)

Mr. Hood:
Your Honor, we have marked here as Government's Exhibit No. 1, showing application to the Southland Life Insurance Company for $5000.00 insurance, 20 year pay endownment income, disability, that was made originally

payable to the estate of the applicant. That is dated the ninth of March, 1927, and purported to be signed by S. H. Fogel, witnessed by Hilda Levy.

(Government's Exhibit No. 1 is as follows:)

140 GOV'T. EX. No. 1.

Application to
Southland Life Insurance Co.
Dallas, Texas

92986

92987

F No. 46993

First Section

I hereby apply to the Southland Life Insurance Company, of Dallas, Texas, for $5,000.00 of Insurance on the 20 Year Endowment Income Disability D. I. Plan, payable to Estate as beneficiary, related to me as—, if living at my death, otherwise to my executors, administrators or assigns. I reserve the right to change the beneficiary subject to the terms and conditions of the policy, and I desire, if more than one person be named as beneficiary, that the insurance be payable to them, their survivors or survivor, share and share alike.

My full name is: Sam Hannah Fogle.

I was born in the town of Melva County of ..... State of Poland on the 10 day of the month of July of the year 1898.

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I wish the policy to be dated at issue (with .... months Introductory Term Insurance at a premium of $.....). My age at nearest birthday to date of Policy will, therefore, be 29 years and the Annual Premium $220.00 for which I have tendered the following settlement: Cash.

I reside at No. Sanger Apts. Street Ervay R. F. D. No. ....., Town Dallas County Dallas State Texas and am employed by Southern Industrial Corp. No. .... Street S. Akard Town Dallas County Dallas State Texas. I have resided at the above address for 1 yr. and in or near the following towns during the last ten years: Dallas.

All communications should be addressed to my Business address.

My present occupation is V. P. & Genl. Mgr. and my duties are Executive.

For the past ten years my occupations have been Investments & Loans.

I am now carrying the following insurance: None.

Date, Company None, Amount, Life Insurance, Monthly Income or Disabilty Double Indemnity Accident, Company, Amount.

I have never applied to any Company for insurance on my life without receiving insurance of the exact amount, kind and premium rate applied for, except as follows: None.

Two friends who know me well are: C. H. Verschoyle of Dallas, Texas, W, E. Pinkston of Dallas, Texas.

In behalf of myself and of every person who shall have or claim interest in any policy issued in consequence of this application, consisting of Sections One and Two, I hereby agree: (1) that all statements and answers contained in this application are full, complete and true as therein written; (2) that the policy or policies issued in consequence thereof, shall constitute the entire contract of insurance and the Company shall not be bound in any way by any promise or statement made by or to any agent, or other person, unless such promise, statement or information be reduced to writing and submitted to the Company and made a part of the contract; (3) that there shall be no liability hereunder until a policy shall be issued and manually delivered to me and accepted by me while in good health, and the first premium thereon actually paid, during my lifetime, provided, however, that if said premium is paid in full to said Company's agent at the time of making this application, and if the Company at its Home Office in Dallas, Texas, shall issue a policy on the plan applied for herein, then the insurance (subject to the provisions of the policy applied for) shall be effective from the date of my medical examination; (4) that if I die within the first insurance year from self-destruction, sane or insane, the liability of the Company shall be limited to the total amount of premiums paid on the policy, and no more.

Signed at Dallas, Texas on the 9th day of March, 1927.

S. H. FOGEL,
Applicant.

Witnessed by:

HILDA LEVY,
Soliciting Agent.

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BLEED THROUGH

This application is hereby extended to cover additional insurance for $10,000 on the E. @ 65 20 P. W. D. I. plan to be submitted for my consideration.

S. H. FOGEL,
Applicant.

Note: If the applicant is a woman, have her answer questions on back hereof.

Mr. Hood:

We have marked as a Government's Exhibit an assignment of that policy, and I presume—pardon me, Mr. Cantrell, I presume a policy was issued on that application, was there not?

A. Yes.

Mr. Hood:

That there was an assignment on that application, executed by Sam Hannah Fogel on the 24th of March, 1943, and the acknowledgment was taken before Mr. P. P. Ballowe, the notary public.

(The instrument referred to was marked Government's Exhibit No. 2 for identification, and is as follows:)

142 GOV'T. EX. No. 2, (FRONT SIDE).

Form No. 10—Life Insurance Assignment.

Form approved by Bank Management Commission American Bankers Association.

Assignment of Life Insurance Policy As Collateral.

A. For Value Received the undersigned hereby assigns, transfer and set over to A. Toplitz of 2635 Forest Avenue, Dallas, Texas, its successors and assigns, (herein called the "Assignee") Policy No. 92986 issued by the Southland Life Insurance Company (herein called the "Insurer") and any supplementary contracts issued in connection therewith (said policy and contracts being herein called the "Policy"), upon the life of Sam Hannah Fogel of Dallas, Texas and all claims, options, privileges, rights, title and interest therein and thereunder (except as provided in Paragraph C hereof), subject to all the terms and conditions of the Policy and to all superior liens, if any, which the Insurer my have against the Policy. The undersigned by this instrument jointly and severally agrees and the Assignee by the acceptance of this assignment agrees to the conditions and provisions herein set forth.

B. It is expressly agreed that, without detracting from the generality of the foregoing, the following specific rights are included in this assignment and pass by virtue hereof:

1. The sole right to collect from the Insurer the net proceeds of the Policy when it becomes a claim by death or maturity;

2. The sole right to surrender the Policy and receive the surrender value thereof at any time provided by the terms of the Policy and at such other times as the Insurer may allow;

3. The sole right to obtain one or more loans or advances on the Policy, either from the Insurer or, at any time, from other persons, and to pledge or assign the Policy as security for such loans or advances;

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4. The sole right to collect and receive all distributions or shares of surplus, dividend deposits or additions to the Policy now or hereafter made or apportioned thereto, and to exercise any and all options contained in the Policy with respect thereto; provided, that unless and until the Assignee shall notify the Insurer in writing to the contrary, the distributions or shares of surplus, dividend deposits and additions shall continue on the plan in force at the time of this assignment; and

5. The sole right to exercise all nonforfeiture rights permitted by the terms of the Policy or allowed by the Insurer and to receive all benefits and advantages derived therefrom.

C. It is expressly agreed that the following specific rights, so long as the Policy has not been surrendered, are reserved and excluded from this assignment and do not pass by virtue hereof:

1. The right to collect from the Insurer any disability income;

2. The right to designate and change the beneficiary;

3. The right to elect optional modes of settlement;

but the reservation of these rights shall in no way impair the right of the Assignee to surrender the Policy completely with all its incidents or impair any other right of the Assignee hereunder, and any designation or change of beneficiary or election of a mode of settlement shall be made subject to this assignment and to the rights of the Assignee hereunder.

D. This assignment is made and the Policy is to be held as collateral security for any and all liabilities of

the undersigned, or any of them, to the Assignee, either now existing or that may hereafter arise in the ordinary course of business between any of the undersigned and the Assignee (all of which liabilities secured or to become secured are herein called "Liabilities"). It is expressly agreed that all sums received by the Assignee hereunder, either in event of death of the insured, the maturity or surrender of the Policy, the obtaining of a loan or advance on the Policy, or otherwise, shall first be applied to the payment of one or more of the following in such order of preference as the Assignee shall determine: (a) principal of and/or interest on Liabilities; (b) premiums on the Policy; (c) principal of and/or interest on loans or advances made by the Insurer on the Policy.

E. The Assignee covenants and agrees with the undersigned as follows:

1. That any balance of sums received hereunder from the Insurer remaining after payment of the then existing Liabilities shall be paid by the Assignee to the persons entitled thereto under the terms of the Policy had this assignment not been executed;

2. That the Assignee will not exercise either the right to surrender the Policy or (except for the purpose of paying premiums) the right to obtain policy loans from the Insurer, until there has been default in any of the Liabilities or a failure to pay any premiums due when due, nor until twenty days after the Assignee shall have mailed, by first-class mail, to the undersigned at the addresses given hereinbelow, notice of intention to exercise such right; and

3. That the Assignee will upon request forward without unreasonable delay to the Insurer the Policy for in-

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dorsement of any designation or change of beneficiary or any election of an optional mode of settlement.

F. The Insurer is hereby authorized to recognize the Assignee's claims to rights hereunder without investigating the reason for any action taken by the Assignee, or the validity or the amount of the Liabilities or the existence of any default therein, or the giving or any notice under Paragraph E (2) above or otherwise, or the application to be made by the Assignee of any amounts to be paid to the Assignee. The sole signature of the Assignee shall be sufficient for the exercise of any rights under the Policy assigned hereby and the sole receipt of the Assignee for any sums received shall be a full discharge and release therefor to the Insurer. Checks for all or any part of the sums payable under the Policy and assigned herein, shall be drawn to the exclusive order of the Assignee if, when, and in such amounts as may be, requested by the Assignee.

G. The Assignee shall be under no obligation to pay any premium, or the principal of or interest on any loans or advances on the Policy whether or not obtained by the Assignee, or any other charges on the Policy, but such amounts so paid by the Assignee from its own funds, shall become a part of the Liabilities hereby secured, shall be due immediately, and shall draw interest at a rate fixed by the Assignee from time to time not exceeding 6% per annum.

H. The exercise of any right, option, privilege or power given herein to the Assignee shall be at the option of the Assignee, but (except as restricted by Paragraph E (2) above) the Assignee may exercise any such right, option, privilege or power without notice to, or assent by,

or affecting the liability of, or releasing any interest hereby assigned by the undersigned, or any of them.

I. The Assignee may take or release other security, may release any party primarily or secondarily liable for any of the Liabilities, may grant extensions, renewals or indulgences with respect to the Liabilities, or may apply to the Liabilities proceeds of the Policy hereby assigned or any amount received on account of the Policy by the exercise of any right permitted under this assignment, without resorting or regard to other security.

J. In the event of any conflict between the provisions of the note or other evidence of any Liability, with respect to the Policy or rights of collateral security therein, the provisions of this assignment shall prevail.

K. Each of the undersigned declares that no proceedings in bankruptcy are pending against him and that his property is not subject to any assignment for the benefit of creditors.

Signed and sealed this 24 day of March, 1943.

SAM H. FOGEL, (L. S.)
Insured or Owner.

.....
Address.

..... (L. S.)
Beneficiary.

.....
Address.

CHARLIE T. DAVIS,
Witness.

.....

.....
Witness.

.....

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143 GOV'T. EX. No. 2 (REVERSE SIDE).

Individual Acknowledgment.

State of Texas,
County of Dallas, ss.

On the 24 day of Mch. 1943, before me personally came Sam H. Fogel, to me known to be the individual.. described in and who executed the assignment on the reverse side hereof and acknowledged to me that ..he.. executed the same.

P. P. BALLOWE,
(P. P. Ballowe)
Notary Public.

(Seal)

My commission expires June 1, 1943.

Corporate Acknowledgment

State of .....,
County of ..... ss.

On the ..... day of ..... 19...., before me personally came ....., who being by me duly sworn, did depose and say that he resides in ....., that he is the ..N..... of ....., the corporation described in and which executed the assignment on the reverse side hereof; that he knows the seal of said corporation; that the seal affixed to said assignment is such corporate seal; that it was affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

.....
Notary Public.

My commission expires .....

Duplicate received and filed at the home office of the Insurer in Dallas, Texas, this 25th day of March 1943.

SOUTHLAND LIFE
INSURANC COMPANY.
By (Illegible)
Authorized Officer Asst.
Secretary.

Note: When executed by a corporation, the corporate seal should be affixed and there should be attached to the assignment a certified copy of the resolution of the Board of Directors authorizing the signing officer to execute and deliver the assignment in the name and on behalf of the corporation.

Mr. Hood:

Now, as Government's Exhibit No. 3, we offer the policy that was issued, showing it was originally made payable to the estate of Sam Hannah Fogel. I will read it, to-wit:

"The insured's executors, administrators, or assigns", and there is a rubber stamp endorsement that says, "See endorsement", and on the back thereof it says beneficiary changed September 11, 1930, to Isadore Fogel, a brother. We offer that. Now, that is the first policy.

(The instrument referred to was marked Government's Exhibit No. 3 for identification, and is as follows:)

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GOVT EX NO 3 (Front Side)

No. 92696

SOUTHLAND LIFE INSURANCE COMPANY

AGREES TO PAY

AMOUNT FIVE THOUSAND Dollars
at its Home Office in the City of Dallas, to

INSURED SIR HARRY PORT, OF DALLAS, TEXAS
If living on the 29TH day of MARCH 1952 (which is the end of the Endowment Period) provided this Policy is then in full force; or to
SEE INDORSEMENT

BENEFICIARY THE INSURED'S EXECUTORS, ADMINISTRATORS OR ASSIGNS
upon receipt of proofs of the death of the Insured occurring before said date, together with proof of interest of the Claimant.

OPTIONS OF SETTLEMENT At the end of the Endowment Period the Insured may surrender this Policy, provided all premiums have been paid, and receive one of the following options in lieu of the cash payment provided for above:

1. A Paid Up Life Policy for $5,000.00 and a cash payment of $2,510.00.
2. A Paid Up Life Policy for $10,065.00.

Options 1 and 2 are subject to evidence of insurability of the Insured satisfactory to the Company.

PREMIUM This Policy is issued at age 29 in consideration of the payment, in advance, of the annual premium of
TWO HUNDRED TWENTY AND NO/100 Dollars
and of the further payment of a like amount upon each 29TH day of MARCH thereafter until TWENTY full years' premiums in all shall have been paid or until the prior death of the Insured.

DISABILITY BENEFITS In accordance with the provisions for Total and Permanent Disability Benefits and subject to the conditions thereof, the Company will waive payment of premiums and pay to the Insured a monthly income of
FIFTY AND NO/100 Dollars

This Policy is subject to the privileges and conditions set forth in the subsequent pages hereof.

DATE EFFECTIVE In witness whereof THE SOUTHLAND LIFE INSURANCE COMPANY has caused this Policy to be executed as of the 29TH day of MARCH, 1927, the date on which it becomes effective and from which Loan and Surrender Values will be computed.

J.S.R. Clerk Southland Secretary. Harry L. Seay. President.

GOV'T .XX NO 3 (First Inside Page)

Privileges and Conditions

CONTRACT

This Policy is the entire contract between the Insured and the Company. After one year and after the payment of the second annual premium, it shall be incontestable except for non-payment of premiums. All statements made by the Insured shall in the absence of fraud be deemed representations and not warranties.

PLACE OF PAYMENT

Premiums are payable in advance at the Home Office of the Company or to any designated collector upon delivery of a receipt signed by the President or Secretary of the Company and countersigned by said collector.

The mode of paying premiums may be written request, be changed on any anniversary of this Policy from annual to semi-annual (50% of the annual) or quarterly (25½% of the annual) or vice versa.

GRACE

A grace of thirty-one days without interest shall be granted for the payment of every premium after the first.

FORFEITURE

If any premium or premium note is not paid on or before the date when due, the liability of the Company hereunder shall lapse from such date except as otherwise provided in this Policy.

REINSTATEMENT

This Policy may be reinstated at any time after forfeiture, upon approval at the Home Office of evidence of insurability satisfactory to the Company and payment of arrears of premiums with interest at the rate of 6 per cent per annum compounded annually from the respective due dates together with the reinstatement or repayment of any indebtedness and the interest thereon.

ASSIGNMENT

Any assignment of this Policy must be executed in duplicate and one copy filed with the Company at its Home Office before it shall be binding on the Company. The Company assumes no responsibility for the validity of any assignment.

CASH LOANS

The Company will lend the Insured at any time any amount up to that secured by the cash value of this Policy on the following conditions:

The Policy must be in full force and not assigned; it shall be the sole security for the loan which must be evidenced by endorsement on the Policy if the same is not deposited with the Company; interest at the rate of 6 per cent per annum shall be payable annually in advance; all existing indebtedness on the Policy and any unpaid balance of the premium for the current policy year shall be deducted from the loan. The granting of such loan may be deferred for a period not exceeding ninety days after receipt of application therefor unless the loan is to be entirely used to pay premiums due the Company. Interest, if not paid when due, shall be added to the principal, provided the entire indebtedness then outstanding shall not exceed the loan value, and shall bear interest at the same rate. The loan or any part thereof may be repaid at any time, but failure to repay it, or to pay interest thereon shall not void this Policy, until the total indebtedness to the Company shall equal or exceed the loan value, in which event the Policy shall automatically terminate.

NON-PAYMENT OF PREMIUMS Automatic Premium Loan

Any premium or instalment of premium not paid within the time allowed for its payment will be advanced by the Company as a loan against the Policy provided the cash value thereof is sufficient to secure such loan and all other existing indebtedness together with interest on the total debt until the next premium or instalment thereof becomes due. The loan shall include all indebtedness and interest to the next premium due date.

The Company shall continue to keep the Policy in force in this manner so long as the cash value thereof less all existing indebtedness shall be sufficient to secure the advance of one day's premium on a quarterly premium basis and one day's interest on the total debt.

After payment of premiums for three full years, the Insured may upon written request to the Company within sixty days after the due date of any unpaid premium, and subject to adjustment for indebtedness:

Cash Value

(A) Surrender this Policy for its Cash Value; or,

Paid Up Endowment Insurance

(B) Have this Policy endorsed as a Policy of Paid Up Endowment Insurance, payable at the same time and under the same conditions as this Policy; or,

Paid Up Term Insurance and Pure Endowment

(C) Have this Policy endorsed as a Policy of Paid Up Term Insurance and Pure Endowment, if any, the Term Insurance beginning at the due date of the unpaid premium for an amount equal to the face value of this Policy, and the Pure Endowment being payable to the Insured if living at the end of the Endowment Period.

Any indebtedness shall reduce the amount of Paid Up Endowment Insurance or the amount of Paid Up Term Insurance and Pure Endowment available, in the proportion which such indebtedness bears to the net value of such Paid Up Endowment Insurance or Paid Up Term Insurance and Pure Endowment.

Reserve Basis

The reserve on this Policy and all the Non-Forfeiture Values shall be based on the American Experience Table of Mortality and interest at the rate of 3½ per cent per annum. The Cash Value, the net value of Paid Up Endowment Insurance, and the net value of Paid Up Term Insurance and Pure Endowment under the foregoing options shall be equal to the reserve under this Policy less a sum not in excess of two and one-half per cent of the face amount of the Policy.

The first year's insurance is term insurance purchased by the whole or part of the first year's premium, and the policy shall be valued according to its terms and the laws of the State in which it is issued.

LOAN AND SURRENDER VALUES

For each completed quarterly or semi-annual premium paid beyond the full years shown, there shall be added a proportionate part of the next year's increase in values.

After Premiums Have Been Paid For	CASH OR LOAN VALUE	PAID UP ENDOWMENT INSURANCE	PAID UP TERM INSURANCE AND PURE ENDOWMENT		
			Years	Months	Pure Endowment
3	$ 405	$ 690	10	5	$ 0
4	$ 595	$ 985	16	0	$ 10
5	$ 790	$ 1270	15	0	$ 430
6	$ 995	$ 1555	14	0	$ 825
7	$ 1205	$ 1830	13	0	$ 1220
8	$ 1430	$ 2105	12	0	$ 1585
9	$ 1660	$ 2370	11	0	$ 1940
10	$ 1900	$ 2630	10	0	$ 2275
11	$ 2155	$ 2895	9	0	$ 2600
12	$ 2425	$ 3155	8	0	$ 2910
13	$ 2700	$ 3405	7	0	$ 3205
14	$ 2990	$ 3650	6	0	$ 3485
15	$ 3295	$ 3895	5	0	$ 3760
16	$ 3605	$ 4125	4	0	$ 4020
17	$ 3930	$ 4350	3	0	$ 4265
18	$ 4270	$ 4570	2	0	$ 4505
19	$ 4625	$ 4785	1	0	$ 4730
20	$ 5000	$ 5000	MATURES		$ 5000
Years					

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GOV'T EX NO 3 (Inside Attachment)

SOUTHLAND LIFE INSURANCE COMPANY

DALLAS, TEXAS

Supplemental Contract, *Attached to and forming part of Policy No.* 92986

Life of SAM HANNAH FOGEL

DOUBLE INDEMNITY

If during the premium paying period (any period covered by introductory term insurance being excepted) and prior to the anniversary date of said policy nearest the insured's attained age of 60 years and before default in the payment of any premium, and before any claim under the disability provisions, if any, has been made or allowed and if none of the non-forfeiture privileges is in effect, the death of the insured results directly and independently of all other causes from bodily injuries effected solely through violent, external and accidental means within ninety days from the occurrence of such accident, and if such accident is evidenced by a visible contusion or wound on the exterior of the body of the insured (except in the case of drowning and internal injuries revealed by an autopsy), the Company will pay the beneficiary (in addition to the amount payable under the life insurance contract) the sum of $ 5,000.00

The benefit provided by this Supplemental Contract shall be void if the insured shall be in any military or naval service at the date of the accident; nor does it cover death resulting directly or indirectly from any of the following, to-wit: Participation in aeronautics or submarine operations; bodily or mental infirmity or disease in any form; self-destruction, intentional or otherwise, whether sane or insane; homicide; nor does it cover death sustained by the insured while intoxicated, while violating the law, while in the service of any police organization, or through war, riot or insurrection; nor does it cover disappearance of the insured. Upon request of the insured the benefit stated herein may be cancelled on any anniversary date of the principal policy, by presentation of the policy to the Company for endorsement, in which event the payment of the extra premium of $ 2.75 charged for this benefit will no longer be required.

In witness whereof the Southland Life Insurance Company has caused this Supplemental Contract to be executed at its Home Office as of the 29TH day of MARCH A. D. 19 27

Leslie Sutherland
ASSISTANT *Secretary.*

Henry L. Seay.
President.

FORM NO. 1750. 3000-5-10-27

185

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GOV'T EX NO 3 (Second Inside Page)

Privileges and Conditions—Continued

BENEFICIARY Unless otherwise provided herein, the Insured may have the Beneficiary changed by endorsement on the Policy at the Home Office of the Company. If the Insured shall survive the Beneficiary last named, the proceeds of the Policy shall be payable to the executors, administrators or assigns of the Insured.

CHANGE OF PLAN The Insured may exchange this Policy without medical re-examination, at any time while it is in full force, for any form of Policy now issued by the Company requiring a higher rate of premium, unless the new Policy provides for Continuous Monthly Income, or for Disability Benefits or Double Indemnity. The new Policy shall be for the same amount and shall bear the same date as this Policy. It shall become effective when this Policy is surrendered to the Company and the difference between the premium on this Policy and the premium on the new Policy, for the number of years this Policy has been in force, together with interest thereon at the rate of 5 per cent per annum compounded annually from the respective due dates, is paid to the Company in cash.

SUICIDE If the Insured shall die by his own act, either sane or insane, the liability of the Company shall be limited to the total amount of premiums paid by the Insured, if such death occurs within one year from the date on which the insurance under this Policy or under any Introductory Term agreement attached hereto takes effect.

AGE If the age of the Insured has been mis-stated the amount payable under this Policy shall be such as the premiums paid would have purchased at the correct age.

INDEBTEDNESS Any indebtedness of the Insured to the Company shall be a first lien on this Policy and will be deducted in any settlement hereunder. Any premium for the current policy year or portion thereof remaining unpaid at the death of the Insured shall be considered as indebtedness.

RIGHT OF ASSIGNMENT The Insured may receive every benefit and exercise every right conferred upon him by this Policy without the consent of the Beneficiary, unless the right to change the Beneficiary has been modified or surrendered at the request or with the consent of the Insured.

MODIFICATION No Agent is authorized to modify this Policy or to the extent of hereby to relinquish it or to extend the time for paying a premium. Only the President, a Vice-President, Secretary, Actuary or Assistant Secretary has the power on behalf of the Company to modify this or any contract of insurance and then only in writing at the Home Office of the Company, and the Company shall not be bound by any promise or representation hereinafter or hereafter made by any other person.

MODES OF SETTLEMENT If there is an assignment of this Policy the Insured or the Beneficiary after the Insured's death (in case the Insured shall have made no election) may elect to have the proceeds of this Policy paid as follows:—

1. By the payment of equal annual instalments for a specified number of years in accordance with the following table for each one thousand dollars of said proceeds, the first instalment being payable immediately; or,

2. By the payment of equal annual instalments payable at the beginning of each year for a fixed period of twenty years and 10 th each longer as the Payee shall survive, in accordance with the following table for each one thousand dollars of said proceeds, the first instalment being payable immediately.
This option can not be elected if there be more than one beneficiary.

Instalments may be made payable semi-annually, quarterly or monthly instead of annually, the amounts being one-half, one-fourth and one-twelfth respectively of the annual instalment.

Any guaranteed instalments payable under Option 1 or Option 2 which shall not have been paid prior to the death of the Payee shall be paid to the Payee's legal representatives or assigns.

Should the Insured request that the proceeds be payable in instalments the Beneficiary shall not have the right to commute such instalments.

When an option calling for payment in instalments is elected this Policy shall be surrendered upon maturity and a supplementary contract issued for the option elected.

OPTION 1 ANNUAL INSTALMENTS—FROM TWO TO TWENTY-FIVE

Number of Instalments	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Amount of each Instalment per $1,000	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]

OPTION 2 CONTINUOUS ANNUAL INSTALMENTS—GUARANTEED FOR TWENTY YEARS

Age last Birthday of Payee at Maturity	16 and Under	17 to 21	22 to 26	27 to 30	31 to 32	33 and 34	35 and 36	37 and 38	39 and 40	41 and 42	43	44 and 45	46	47 and 48	49	50 and 51	52	53 and 54	55 and 56	57	58 and 59	60 and Over
Amount of each Instalment per $1,000	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]

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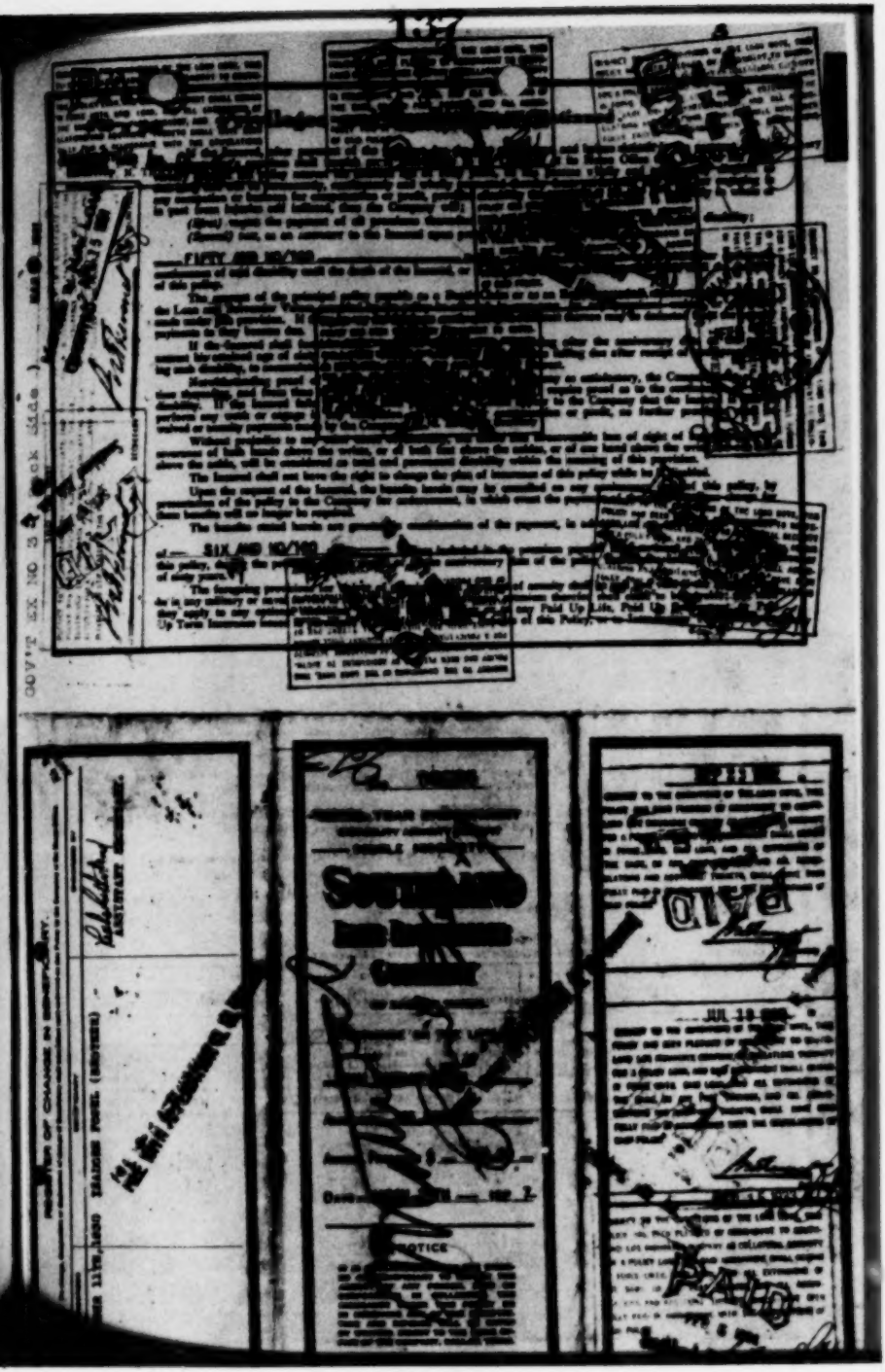

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Mr. Hood:

Now, we offer Exhibit 4, which is an escrow agreement with the Republic National Bank of this city, signed "Sam H. Fogel", and shows another signature there I can't make out, and some vice president of the bank. We offer that, as to the signature, bearing out it is one and the same person.

Mr. Dailey:

We object to that, if the Court please, because no sufficient predicate has been laid for the introduction of this exhibit.

The Court:

We understand all this is contingent upon further evidence, yet to be offered. We will admit it under those circumstances.

(The instrument referred to was marked Government's Exhibit No. 4 for identification, and is as follows:)

151 GOV'T. EX. No. 4.

Form 615.

Republic National Bank of Dallas

Dallas, Texas, Mar. 25, 1943.

Escrow No. 197.

The undersigned have this day placed in escrow with the Republic National Bank of Dallas certain documents or articles or money or drafts representing money or other things of value as enumerated on the reverse side

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hereof and they hereby direct that the same shall be delivered by said bank only to them jointly or to one of them upon the written order of the other or to a third person upon the written order of all concerned or to their representatives or agents legally appointed, authority for such appointment being duly filed with said bank.

It is further understood and agreed that either or any party to this agreement in the presence of a representative of the Bank may examine the subject matter of said escrow during the business hours of the said bank; that this agreement is a personal one and in connection therewith the responsibility of the said bank shall be restricted to the observance of due dilligence as governed by ordinary business practices and the duty of the said bank holding this escrow shall be only to the parties entering this agreement, their heirs, executors, administrators, and to no other person whatsoever; that no party to this agreement will assign or attempt to assign their interest or any part of it; that said bank assumes no responsibility except what is expressed in this agreement and that in case said bank should become involved in litigation in any manner whatsoever on account of this escrow deposit or on account of this agreement, the undersigned hereby bind themselves to pay said bank at its office in Dallas, Dallas County, Texas, in addition to any charge that may be made hereunder, its reasonable charges, counsel and attorneys' fees, disbursements, expenses, losses, and damages in connection with and resulting from such litigation.

SAM H. FOGEL,
A. TOPLITZ.

Received the items on reverse side hereof upon conditions recited above March 25th, 1943.

REPUBLIC NATIONAL BANK
OF DALLAS,
By (Illegible)
Vice President.

The above and foregoing items this day delivered to the undersigned in good order and original condition and the undersigned jointly acknowledge receipt thereof in good order and original condition and declare this escrow fully satisfied, canceled and discharged and said Bank released and discharged from all duty and obligation thereunder, this the ..... day of ..... 19.....

.....
.....
.....
.....

Mr. Cantrell:

All right, have you got some more you want to put in on that one?

Mr. Hood:

Yes. I am taking all these, if the Court please, and Mr. Walker—I believe that is your name?

A. Yes.

Mr. Hood:

From the file in connection with the first policy, and these are all the original records of this company, kept in the course of your business, in the issuance of that policy on the application made?

A. Yes.

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Mr. Hood:

All right, Government's Exhibit 5, an application of the Southland Life Insurance Company in connection with the first policy, it says, "I hereby apply for a loan of $750.00", and signed "Sam H. Fogel", on the 15th day of December, 1933. The notary public is Zelda Hallingsworth, Dallas County, Texas.

Mr. Dailey:

The same objection to that, if your Honor please.

The Court:

All right, you can have the same objection to all of them.

Mr. Dailey:

Thank you, your Honor.

(The instrument referred to was marked Government's Exhibit No. 5 for identification, and is as follows:)

153 GOV'T. EX. No. 5.

Filed by Vera Gaston.

Southland Life Insurance Company:

I hereby apply for a loan of $750.00 on the security of Policy No. 92986 issued by the Southland Life Insurance Company on my life. As an inducement to said Company to make the loan, and in order that the regulations promulgated by the Board of Insurance Commissioners of the State of Texas, effective June 16, 1933, may be fully complied with, I hereby certify:

1. That the proceeds of the loan, if made, shall not be used for purpose of speculation, or for making any new investment.

2. That the loan, to the extent applied for, is required to relieve need or prevent hardship, and as evidence that the loan is required for such reasons, I submit the following facts which are full, complete and true:

(Here, state fully the reasons why the loan is required; the manner in which the proceeds will be applied and state reasons why failure to make the loan will cause hardship.)

On account of demand of business due to heavy loans at this season.

It is understood and agreed that the Company shall have the option to verify the above facts by independent investigation and that the completion of the loan may be delayed sufficiently to enable such investigation to be made.

SAM H. FOGEL,
Insured.

Sworn to and subscribed, before me, this 15th day of December, 1933.

ZELDA HOLLINGSWORTH,
(Seal) Notary Public Dallas County, Texas.

File with application (Wilma Miller)

Mr. Hood:

Mr. Walker, I expect it would be better for you to take this out. This is a file in connection with the first policy.

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Here is a letter signed S. H. Fogel, over the typed signature of Samuel Hannah Fogel. I wish you would withdraw that from your file, please, sir, and we will want to keep that as straight as we possibly can.

(The instrument referred to was marked Government's Exhibit No. 6 for identification, and is as follows:)

155 GOV'T. EX. No. 6.

Hotel Edison
New York, N. Y.

March 26, 1945.

Filed by M. Cook.

Southland Life Insurance Company
Dallas, Texas.

Gentlemen:

In connection with income tax matters requiring immediate attention, will you kindly advise me at once, the amount of interest paid to you during the calendar years 1941, 1942 and 1943 on personal loans as then outstanding with your company.

Please advise me also, as to the amount of income, if any, realized by me upon the twelve (12) annuity policies previously carried with your company and on which premium payments were made of $200.00 per month.

The information requested above should be forwarded to me at once, in care of Mr. Nathan Berkman, 29 Broadway, New York 6. N. Y.

Very truly yours,
S. H. FOGEL.
(Samuel H. Fogel)

SHF:W

Received Mar. 28, 1945.

Mr. Hood:
Now, Government's Exhibit No. 6, Mr. Walker, that is a letter you just extracted from the file, having to do with the first insurance policy issued Sam H. Fogel, is that correct?

A. Yes, sir, that is right.

Mr. Hood:
And you have taken that from your official file?

A. Yes.

Mr. Hood:
And you are custodian of those records?

A. Yes, sir.

Mr. Hood:
This, your Honor, is a letter dated March 26, 1945, addressed to the Southland Life Insurance Company.

(The Government's Exhibit No. 6 was here read.)

The Court:
Let me see that letter.

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Mr. Hood:
If there is going to be any denial that he is the man, we want to be sure and establish it.

Mr. Cantrell:
All right, have you got all the exhibits you want.

Mr. Hood:
Yes.

Mr. Cantrell:
Mark that, will you.

(The instrument referred to was marked Government's Exhibit No. 7 for identification.)

Mr. Cantrell:
If the Court please, we have had marked as Government's Exhibit No. 7, what purports to be an application for $10,000.00 worth of insurance, on the endowment at age 65, 20 premium, premium waiver, and double indemnity plan. It purports to be signed by S. H. Fogel, and among other things, it purports to recite that he is employed by the Southern Industrial Corporation, in Dallas, Texas, as vice president and general manager, among other things, and we want to offer that.

(Government's Exhibit No. 7 is as follows:)

In Which Section of Texas Do Men Think the Most of Their Fam

APPLICATION TO

Southland Life Insurance Co.

DALLAS, TEXAS

92986

FIRST SECTION

I hereby apply to the Southland Life Insurance Company, of Dallas, Texas, for $ ... of Insurance on the Endowment at 65 Ordinary Home Office Policy ... payable to ... as beneficiary, related to me as ..., if living at my death, otherwise to my ... ecutors, administrators or assigns. ... reserve the right to change the beneficiary subject to the terms ... conditions of the policy, and I ... person be named as beneficiary, that the insurance ... payable to them, their survivor or survivors, ... and ... share alike.

My full name is: ...

I was born in the town of ... County of ...

State of Poland ... of the month of July ... of the year ...

I wish the policy to be dated ... months Introductory ...

premium of $...). My ... at nearest birthday ... date of ...

and the Annual Premium $...

I reside at No. ... Street ... Town ... County ...

State of TEXAS ...

I have resided at the above address for ... years and in ... the following ...

ten years: Dallas, Texas

All communications should be addressed to ...

My present occupation is ... and my duties ...

For the past ten years my occupations have been ...

I am now carrying the following insurance:

Date	Company	Amount
3-29-27	Southland Life	

I have never applied to any Company for insurance on my life except as follows: ... insurance of the exact ... kind and premium rate applied for, except as follows: None

Two friends who knew me well are:

E. H. Vorschagle ... of Dallas, Texas

R. E. Pinkston ... of ...

In behalf of myself and of every person who shall have or claim any interest in any policy issued in consequence of this application, consisting of ... One and Two, I hereby agree: (1) that all statements and answers contained in this application are full, complete and true to the best ... policy or policies issued in consequence thereof, shall constitute the entire contract of insurance and the Company shall not be bound by any ... promise or statement made by or to any agent, or other person, unless such promise, statement or information be reduced to writing and ... Company and made a part of the contract; (3) that there shall be no liability hereunder until a policy shall be issued and manually delivered ... accepted by me while in good health and the first premium thereon actually paid, during my lifetime, provided, however, that if said premium is ... to said Company's agent at the time of making this application, and if the Company at its Home Office in Dallas, Texas, shall issue a policy ... applied for herein, then the insurance (subject to the provisions of the policy applied for) shall be effective from the date of my ... that if I die within the first insurance year from self-destruction, sane or insane, the liability of the Company shall be limited to the total amount ... unless paid on the policy, and no more.

This application is hereby extended to cover additional insurance for $ ... on the ... plus to be submitted for my consideration.

Applicant

Signed: H. Vogel ... on the 30 day July

Dallas Texas

Witnessed by: Helen ...

Applic...

Soliciting Agt.

NOTE: If the applicant is a woman, have her answer questions on back hereof.

GOV'T EX NO 7

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(By Mr. Cantrell):

Q. Mr. Walker, do you know Hilda Levy?

A. No.

Q. Who purports to be soliciting agent?

A. The records of the company show at one time she was a soliciting agent for the company.

Mr. Cantrell:

Mark that one.

(The instrument referred to was marked Government's Exhibit No. 8 for identification.)

Mr. Cantrell:

If the Court please, we have had marked Government's Exhibit No. 8, an application for a loan on policy 96767, issued by the Southland Life Insurance Company, which this witness has produced here, signed "Sam H. Fogel", and purporting to be executed on the 20th day of July, 1933; we offer that.

(Government's Exhibit No. 8 is as follows:)

160 GOV'T. EX. No. 8.

Filed by Lola Owen.

Southland Life Insurance Company:

I hereby apply for a loan of $1,000.00 on the security of Policy No. 96767 issued by the Southland Life Insurance Company on my life. As an inducement to said Company to make the loan, and in order that the regulations promulgated by the Board of Insurance Commissioners of the State of Texas, effective June 16, 1933, may be fully complied with, I hereby certify:

1. That the proceeds of the loan, if made, shall not be used for purposes of speculation, or for making any new investment.

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2. That the loan, to the extent applied for, is required to relieve need or prevent hardship, and as evidence that the loan is required for such reasons, I submit the following facts which are full, complete and true:

(Here, state fully the reasons why the loan is required; the manner in which the proceeds will be applied and state reasons why failure to make the loan will cause hardship.

I want the above amount to prevent the loss of property in my possession.

It is understood and agreed that the Company shall have the option to verify the above facts by independent investigation and that the completion of the loan may be delayed sufficiently to enable such investigation to be made.

SAM H. FOGEL,
Insured.

Sworn to and subscribed, before me, this 20 day of July 1933.

NANCY DAVIS,
(Seal) Notary Public Dallas County, Texas.

File with application file (Wilma Miller)

Mr. Cantrell:

We offer a similar letter or application on policy 96767, for a loan of $1000.00, purporting to be executed on the 24th day of June, 1933, by someone who signs, "Sam Hannah Fogel".

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(The instrument above referred to was marked Government's Exhibit No. 9 for identification, and is as follows:)

162 GOV'T. EX. No. 9.

Filed by Zeta Johnson.

Southland Life Insurance Company:

I hereby apply for a loan of $1,000.00 on the security of Policy No. 96767 issued by the Southland Life Insurance Company on my life. As an inducement to said Company to make the loan, and in order that the regulations promulgated by the Board of Insurance Commissioners of the State of Texas, effective June 16, 1933, may be fully complied with, I hereby certify:

1. That the proceeds of the loan, if made, shall not be used for purposes of speculation, or for making any new investment.

2. That the loan, to the extent applied for, is required to relieve need or prevent hardship, and as evidence that the loan is required for such reasons, I submit the following facts which are full, complete and true:

(Here, state fully the reasons why the loan is required; the manner in which the proceeds will be applied and state reasons why failure to make the loan will cause hardship.

The proceeds of this loan will be applied on my account to prevent a creditor from taking my personal property away from me under (the hammer) foreclosure.

It is understood and agreed that the Company shall have the option to verify the above facts by independent investigation and that the completion of the loan may be delayed sufficiently to enable such investigation to be made.

SAM HANNAH FOGEL,
Insured.

Sworn to and subscribed, before me this 24 day of June, 1933.

ALICE DALE LINDSEY,
(Seal) Notary Public Dallas County, Texas.

File with application file (Wilma Miller)

Mr. Hood:

If your Honor please, we would like at this point—mark this—to offer the signature of the defendant, Samuel Hanah Fogel, which appears on the motion for a new trial, filed herein, where he swore to the contents of the affidavit, just the signature there for comparison purposes, for the Court.

(The page referred to, and marked Government's Exhibit No. 10, for identification, is as follows:)

164 GOVERNMENT'S EXHIBIT No. 10.

State of Texas,
County of Dallas,

Before Me, the undersigned authority, on this day personally appeared Samuel Hannah Fogel, and, after having been by me first duly sworn, stated on his oath

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that the allegations contained herein are true in substance and in fact.

SAMUEL HANNAH FOGEL.

Subscribed and sworn to before me this 3rd day of November, 1947.

EDNA VAN ARSDELL,
Notary Public, Dallas County, Texas.

(Seal)

Mr. Cantrell:

If you please, take the third policy that you have with you, the policy file, when you get to it. Do you have the application for that policy, and the policy also, please, sir, if you have it. Is this the application, or is that the policy?

A. That is the policy.

(The instrument referred to was marked Government's Exhibit No. 11 for identification.)

Mr. Hood:

Your Honor, Government's Exhibit No. 11 is an application of the Southland Life Insurance Company, purported to be by Sam H. Fogel, dated the 15th day of June, 1934, and in that he states he was born on the 10th day of July, 1898.

Mr. Dailey:

What place?

Mr. Hood:

Well, in this, he doesn't say, he just says was born in the town of Poland.

Mr. Dailey:
Pardon me. Where is that one, the town Melvern?

Mr. Hood:
Melva.

(Government's Exhibit No. 11 is as follows:)

GOV'T EX. No. 11.

Application To
Southland Life Insurance Co.
Dallas, Texas. 169908
F. No. 1654.

First Section.

I hereby apply to the Southland Life Insurance Company of Dallas, Texas, for $2 units of Insurance on the Retirement Annuity Plan, payable to Susha Fogel as beneficiary, related to me as Sister, if living at my death, otherwise to my executors, administrators or assigns. I reserve the right to change the beneficiary subject to the terms and conditions of the policy, and I desire, if more than one person be named as beneficiary, that the insurance be payable to them, their survivors or survivor, share and share alike.

My full name is: Sam Hannah Fogel.

* * * * * *

I was born in the town of Poland, County of ....., State of ..... on the 10th day of the month of July, of the year 1898.

I wish the policy to be dated at issue (with ..... months Introductory Term Insurance at a premium of $.....). My age at nearest birthday to date of Policy will, therefore, be 36 years.

I wish premiums payable in (Annual—semi-annual—quarterly) annual instalments of $200.00 and for first such instalment have tendered the following settlement: s.o.d.

I reside at No. Adolphus Street Hotel. R. F. D. No. ....., Town Dallas, County Dallas, State Texas, and am employed by United Investment Company, No. 402 Street Gulf States Bldg., Town Dallas, County Dallas, State Texas. My present occupation is owner and my duties are executive.

For the past ten years my occupations have been above.

I have resided at the given address for 2½ years and in or near the following towns during the last ten years: Dallas.

All communications should be addressed to my business address.

I now have the following insurance in force on my life:

		Amount			Accident	
Date	Company	Life Insurance	Mo. Income on Disability	Double Indemnity	Company	Amount
.....	Southland	15,000	.....	.....	.....	.....

In addition to this application I have now pending the following applications for the amounts and in the companies stated: .....

I have never applied to any Company for insurance on my life without receiving insurance of the exact amount, kind and premium rate applied for, except as follows:
.....

Two friends who know me well are:
..... of .....
..... of .....

In behalf of myself and of every person who shall have or claim any interest in any policy issued in consequence of this application, consisting of Sections One and Two, I hereby agree: (1) that all statements and answers contained in the application are full, complete and true as therein written; (2) that the policy or policies issued in consequence thereof, shall constitute the entire contract of insurance and the Company shall not be bound in any way by any promise or statement made by or to any agent, or other person, unless such promise, statement or information be reduced to writing and submitted to the Company and made a part of the contract; (3) that there shall be no liability hereunder until a policy shall be issued and manually delivered to me and accepted by while in good good health, and the first premium thereon actually paid, during my lifetime, provided, however, that if said premium is paid in full to said Company's agent at the time of making this application, and if the Company at its Home Office in Dallas, Texas, shall issue a policy on the plan applied for herein, then the insurance (subject to the provisions of the policy applied for) shall be effective from the date of the company's approval of this application; (4) that if I die within two years from date the insurance takes effect from self-destruction, sane or insane, the liability of the Company shall be limited to the total amount of premiums paid on the policy, and no more; (5) that the Company shall have sixty (60) days from the

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receipt of the application at its Home Office within which to pass upon it, and if the same shall not be accepted within said time (or if a policy upon a modified or different form from that applied for shall not be issued within such time) it shall be conclusively deemed that this application is declined.

Signed at Dallas on the 15 day of June, 1934.

SAM H. FOGEL,
Applicant.

Witnessed by:

L. S. SEGALL,
Soliciting Agent.

This application is hereby extended to cover additional insurance for $..... on the ..... plan to be submitted for my consideration.

....., Applicant.

Note: If the applicant is a woman, have her answer questions on back hereof.

Receipt detached at Home Office.

Mr. Cantrell:
Mark that, if you like.

(The instrument referred to was marked Government's Exhibit No. 12 for identification.)

Mr. Cantrell:
I have here, your Honor, an application handed me by the witness, which purports to be signed by Sam H. Fogel, which recites a birth date as the 10th of July, 1898, stating he was born in Poland, and he states his full name, Sam Hannah Fogel, and it states that it is a re-

tirement annuity policy plan, for two units, on his life, payable to Susha Fogel, a sister. We offer it.

(Government's Exhibit No. 12 is as follows):

GOV'T EX. No. 12.

Application To
Southland Life Insurance Co.
Dallas, Texas. F No. 1653175.

First Section.

I hereby apply to the Southland Life Insurance Company of Dallas, Texas, for $2 units of Insurance on the Retirement Annuity Plan, payable to Susha Fogel as beneficiary, related to me as Sister, if living at my death, otherwise to my executors, administrators or assigns. I reserve the right to change the beneficiary subject to the terms and conditions of the policy, and I desire, if more than one person be named as beneficiary, that the insurance be payable to them, their survivors or survivor, share and share alike.

My full name is: Sam Hannah Fogel.

I was born in the town of Poland, County of ....., State of ..... on the 10th day of the month of July, of the year 1898.

I wish the policy to be dated at issue (with..... months Introductory Term Insurance at a premium of $.....). My age at nearest birthday to date of Policy will, therefore, be 36 years.

I wish premiums payable in (Annual—semi-annual—quarterly) annual instalments of $200.00 and for first

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such instalment have tendered the following settlement: s.o.d.

I reside at No. Adolphus Street Hotel. R. F. D. No. ....., Town Dallas, County Dallas, State Texas, and am employed by United Investment Company, No. 402 Street Gulf States Bldg., Town Dallas, County Dallas, State Texas. My present occupation is owner and my duties are executive.

For the past ten years my occupations have been above.

I have resided at the given address for 2½ years and in or near the following towns during the last ten years: Dallas.

All communications should be addressed to my business address.

I now have the following insurance in force on my life:

		Amount			Accident	
Date	Company	Life Insurance	Mo. Income on Disability	Double Indemnity	Company	Amount
.....	Southland	15,000	.....	.....	.....	.....

In addition to this application I have now pending the following applications for the amounts and in the companies stated: .....

I have never applied to any Company for insurance on my life without receiving insurance of the exact amount, kind and premium rate applied for, except as follows: ....

Two friends who know me well are:

..... of .....

..... of .....

In behalf of myself and of every person who shall have or claim any interest in any policy issued in consequence of this application, consisting of Sections One and Two, I hereby agree: (1) that all statements and answers contained in the application are full, complete and true as therein written; (2) that the policy or policies issued in consequence thereof, shall constitute the entire contract of insurance and the Company shall not be bound in any way by any promise or statement made by or to any agent, or other person, unless such promise, statement or information be reduced to writing and submitted to the Company and made a part of the contract; (3) that there shall be no liability hereunder until a policy shall be issued and manually delivered to me and accepted by while in good good health, and the first premium thereon actually paid, during my lifetime, provided, however, that if said premium is paid in full to said Company's agent at the time of making this application, and if the Company at its Home Office in Dallas, Texas, shall issue a policy on the plan applied for herein, then the insurance (subject to the provisions of the policy applied for) shall be effective from the date of the company's approval of this application; (4) that if I die within two years from date the insurance takes effect from self-destruction, sane or insane, the liability of the Company shall be limited to the total amount of premiums paid on the policy, and no more; (5) that the Company shall have sixty (60) days from the receipt of the application at its Home Office within which to pass upon it, and if the same shall not be accepted within said time (or if a policy upon a modified or different form from that applied for shall not be issued within such time) it shall be conclusively deemed that this application is declined.

POOR COPY

Signed at Dallas on the 14 day of May, 1934.

SAM H. FOGEL,
Applicant.

Witnessed by:

L. S. SEGALL,
Soliciting Agent.

This application is hereby extended to cover additional insurance for $..... on the ..... plan to be submitted for my consideration.

....., Applicant.

Note: If the applicant is a woman, have her answer questions on back hereof.

Receipt detached at Home Office.

Mr. Cantrell:

I have here what has been marked Government's Exhibit No 13, your Honor, another one of these applications, reciting the birth date of one Sam Hannah Fogel, as being the 10th day of July, 1898, and it purports to be signed by Sam H. Fogel, on the 12th of July, 1934. We offer it.

(The instrument above referred to was marked Government's Exhibit No. 13 for identification, and is as follows:)

GOV'T EX. No. 13.

Application To
Southland Life Insurance Co.
Dallas, Texas. F No. 1656.
170513.

First Section.

I hereby apply to the Southland Life Insurance Company, of Dallas, Texas, for $ 2 units of Insurance on the Retirement Annuity Plan, payable to Susha Fogel as beneficiary, related to me as Sister, if living at my death, otherwise to my executors, administrators or assigns. I reserve the right to change the beneficiary subject to the terms and conditions of the policy, and I desire, if more than one person be named as beneficiary, that the insurance be payable to them, their survivors or survivor, share and share alike.

My full name is: Sam Hannah Fogel.

I was born in the town of Poland, County of ....., State of ..... on the 10th day of the month of July, of the year 1898.

I wish the policy to be dated July 19, 1934 (with..... months Introductory Term Insurance at a premium of $.....). My age at nearest birthday to date of Policy will, therefore, be 36 years.

I wish premiums payable in (Annual—semi-annual—quarterly) annual instalments of $200.00 and for first such instalment have tendered the following settlement: s.o.d.

I reside at No. Adolphus Street Hotel. R. F. D. No. ....., Town Dallas, County Dallas, State Texas, and

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am employed by United Investment Company, No. 402 Street Gulf States Bldg., Town Dallas, County Dallas, State Texas. My present occupation is owner and my duties are executive.

For the past ten years my occupations have been above.

I have resided at the given address for 2½ years and in or near the following towns during the last ten years: Dallas.

All communications should be addressed to my business address.

I now have the following insurance in force on my life:

		Amount			Accident	
Date	Company	Life Insurance	Mo. Income on Disability	Double Indemnity	Company	Amount
.....	Southland	15,000	.....	.....	.....	.....

In addition to this application I have now pending the following applications for the amounts and in the companies stated: .....

I have never applied to any Company for insurance on my life without receiving insurance of the exact amount, kind and premium rate applied for, except as follows: .....

Two friends who know me well are:

..... of .....

..... of .....

In behalf of myself and of every person who shall have or claim any interest in any policy issued in consequence of this application, consisting of Sections One and Two, I

hereby agree: (1) that all statements and answers contained in the application are full, complete and true as therein written; (2) that the policy or policies issued in consequence thereof, shall constitute the entire contract of insurance and the Company shall not be bound in any way by any promise or statement made by or to any agent, or other person, unless such promise, statement or information be reduced to writing and submitted to the Company and made a part of the contract; (3) that there shall be no liability hereunder until a policy shall be issued and manually delivered to me and accepted by while in good good health, and the first premium thereon actually paid, during my lifetime, provided, however, that if said premium is paid in full to said Company's agent at the time of making this application, and if the Company at its Home Office in Dallas, Texas, shall issue a policy on the plan applied for herein, then the insurance (subject to the provisions of the policy applied for) shall be effective from the date of the company's approval of this application; (4) that if I die within two years from date the ininsurance takes effect from self-destruction, sane or insane, the liability of the Company shall be limited to the total amount of premiums paid on the policy, and no more; (5) that the Company shall have sixty (60) days from the receipt of the application at its Home Office within which to pass upon it, and if the same shall not be accepted within said time (or if a policy upon a modified or different form from that applied for shall not be issued within such time) it shall be conclusively deemed that this application is declined.

Signed at Dallas on the 12 day of July, 1934.

SAM H. FOGEL,
Applicant.

Witnessed by:

L. S. SEGALL,
Soliciting Agent.

POOR COPY

This application is hereby extended to cover additional insurance for $..... on the ..... plan to be submitted for my consideration.

....., Applicant.

Note: If the applicant is a woman, have her answer questions on back hereof.

Receipt detached at Home Office.

Mr. Cantrell:
We still have another one, Your Honor.

(The instrument referred to was marked Government's Exhibit No. 14 for identification.)

Mr. Cantrell:
Which will be Government's Exhibit 14, which is a similar application, reciting the birth date as being the 10th day of July, 1898, of one Sam Hannah Fogel, and supposed to be signed by Sam H. Fogel. We offer that also.

(Government's Exhibit No. 14 is as follows:)

GOV'T EX. No. 14.

Application To
Southland Life Insurance Co.
Dallas, Texas. 171228.
F No. 1657.

First Section.
I hereby apply to the Southland Life Insurance Company, of Dallas, Texas, for $ 2 units of Insurance on the Retirement Annuity Plan, payable to Susha Fogel as

beneficiary, related to me as Sister, if living at my death, otherwise to my executors, administrators or assigns. I reserve the right to change the beneficiary subject to the terms and conditions of the policy, and I desire, if more than one person be named as beneficiary, that the insurance be payable to them, their survivors or survivor, share and share alike.

My full name is: Sam Hannah Fogel.

I was born in the town of ....., County of ..... State of Poland, on the 10th day of the month of July, of the year 1898.

I wish the policy to be dated Aug. 19th (with ..... months Introductory Term Insurance at a premium of $.....). My age at nearest birthday to date of Policy will, therefore, be 36 years.

I wish premiums payable in (Annual—semi-annual—quarterly) annual instalments of $200.00 and for first such instalment have tendered the following settlement: s.o.d.

I reside at No. Adolphus Street Hotel. R. F. D. No. ....., Town Dallas, County Dallas, State Texas, and am employed by United Investment Company, No. 402 Street Gulf States Bldg., Town Dallas, County Dallas, State Texas. My present occupation is owner and my duties are executive.

For the past ten years my occupations have been above.

I have resided at the given address for 2½ years and in or near the following towns during the last ten years: Dallas.

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All communications should be addressed to my business address.

I now have the following insurance in force on my life:

		Amount			Accident	
Date	Company	Life Insurance	Mo. Income on Disability	Double Indemnity	Company	Amount
.....	Southland	15,000	.....	.....	.....	.....

In addition to this application I have now pending the following applications for the amounts and in the companies stated: .....

I have never applied to any Company for insurance on my life without receiving insurance of the exact amount, kind and premium rate applied for, except as follows: .....

Two friends who know me well are:
..... of .....
..... of .....

In behalf of myself and of every person who shall have or claim any interest in any policy issued in consequence of this application, consisting of Sections One and Two, I hereby agree: (1) that all statements and answers contained in the application are full, complete and true as therein written; (2) that the policy or policies issued in consequence thereof, shall constitute the entire contract of insurance and the Company shall not be bound in any way by any promise or statement made by or to any agent, or other person, unless such promise, statement or information be reduced to writing and submitted to the Company and made a part of the contract; (3) that there shall be no liability hereunder until a policy shall be issued and manually delivered to me and accepted by while in good

good health, and the first premium thereon actually paid, during my lifetime, provided, however, that if said premium is paid in full to said Company's agent at the time of making this application, and if the Company at its Home Office in Dallas, Texas, shall issue a policy on the plan applied for herein, then the insurance (subject to the provisions of the policy applied for) shall be effective from the date of the company's approval of this application; (4) that if I die within two years from date the ininsurance takes effect from self-destruction, sane or insane, the liability of the Company shall be limited to the total amount of premiums paid on the policy, and no more; (5) that the Company shall have sixty (60) days from the receipt of the application at its Home Office within which to pass upon it, and if the same shall not be accepted within said time (or if a policy upon a modified or different form from that applied for shall not be issued within such time) it shall be conclusively deemed that this application is declined.

Signed at Dallas, Texas, on the 14 day of August, 1934.

SAM H. FOGEL,
Applicant.

Witnessed by:

L. S. SEGALL,
Soliciting Agent.

This application is hereby extended to cover additional insurance for $..... on the ..... plan to be submitted for my consideration.

....., Applicant.

Note: If the applicant is a woman, have her answer questions on back hereof.

Receipt detached at Home Office.

Mr. Cantrell:

Another document, Your Honor, handed to me by the witness, which has been marked Government's Exhibit No. 15. It is another application, purporting to be signed by Sam H. Fogel, whose full name is Sam Hannah Fogel, and on which he gives his birth date as the 10th day of July, 1898. We offer it in evidence.

(The instrument referred to was marked Government's Exhibit No. 15 for identification, and is as follows:)

GOV'T EX. No. 15.

Application To
Southland Life Insurance Co.
Dallas, Texas. 171822.
F No. 1658.

First Section.

I hereby apply to the Southland Life Insurance Company, of Dallas, Texas, for $ 2 units of Insurance on the Retirement Annuity Plan, payable to Susha Fogel as beneficiary, related to me as Sister, if living at my death, otherwise to my executors, administrators or assigns. I reserve the right to change the beneficiary subject to the terms and conditions of the policy, and I desire, if more than one person be named as beneficiary, that the insurance be payable to them, their survivors or survivor, share and share alike.

My full name is: Sam Hannah Fogel.

I was born in the town of ....., County of ..... State of Poland, on the 10th day of the month of July, of the year 1898.

I wish the policy to be dated Sept. 19, 1934 (with ..... months Introductory Term Insurance at a premium of $.....). My age at nearest birthday to date of Policy will, therefore, be 36 years.

I wish premiums payable in (Annual—semi-annual—quarterly) annual installments of $200.00 and for first such instalment have tendered the following settlement: s.o.d.

I reside at No. Adolphus Street Hotel. R. F. D. No. ....., Town Dallas, County Dallas, State Texas, and am employed by United Investment Company, No. 402 Street Gulf States Bldg., Town Dallas, County Dallas, State Texas. My present occupation is owner and my duties are executive.

For the past ten years my occupations have been above.

I have resided at the given address for 2½ years and in or near the following towns during the last ten years: Dallas.

All communications should be addressed to my business address.

I now have the following insurance in force on my life:

		Amount			Accident	
Date	Company	Life Insurance	Mo. Income on Disability	Double Indemnity	Company	Amount
.....	Southland	15,000	.....	.....	.....	.....

In addition to this application I have now pending the following applications for the amounts and in the companies stated: .....

I have never applied to any Company for insurance on my life without receiving insurance of the exact amount, kind and premium rate applied for, except as follows:
.....

Two friends who know me well are:
..... of .....
..... of .....

In behalf of myself and of every person who shall have or claim any interest in any policy issued in consequence of this application, consisting of Sections One and Two, I hereby agree: (1) that all statements and answers contained in the application are full, complete and true as therein written; (2) that the policy or policies issued in consequence thereof, shall constitute the entire contract of insurance and the Company shall not be bound in any way by any promise or statement made by or to any agent, or other person, unless such promise, statement or information be reduced to writing and submitted to the Company and made a part of the contract; (3) that there shall be no liability hereunder until a policy shall be issued and manually delivered to me and accepted by while in good good health, and the first premium thereon actually paid, during my lifetime, provided, however, that if said premium is paid in full to said Company's agent at the time

of making this application, and if the Company at its Home Office in Dallas, Texas, shall issue a policy on the plan applied for herein, then the insurance (subject to the provisions of the policy applied for) shall be effective from the date of the company's approval of this application; (4) that if I die within two years from date the in-insurance takes effect from self-destruction, sane or insane, the liability of the Company shall be limited to the total amount of premiums paid on the policy, and no more; (5) that the Company shall have sixty (60) days from the receipt of the application at its Home Office within which to pass upon it, and if the same shall not be accepted within said time (or if a policy upon a modified or different form from that applied for shall not be issued within such time) it shall be conclusively deemed that this application is declined.

Signed at Dallas, Texas, on the 7th day of September, 1934.

SAM H. FOGEL,
Applicant.

Witnessed by:

L. S. SEGALL,
Soliciting Agent.

This application is hereby extended to cover additional insurance for $..... on the ..... plan to be submitted for my consideration.

....., Applicant.

Note: If the applicant is a woman, have her answer questions on back hereof.

Receipt detached at Home Office.

POOR COPY

Mr. Cantrell:

The witness has handed me a document which the reporter has marked Government's Exhibit 16. It is another similar application to those heretofore introduced. It was executed, purportedly, on the 5th day of October, 1934, and signed by one Sam H. Fogel, which recites the full name as Sam Hannah Fogel, and he was born in Poland, on the 10th day of July, 1898, and we offer it in evidence.

(The instrument referred to was marked Government's Exhibit No. 16 for identification, and is as follows:)

GOV'T EX. No. 16.

Application To
Southland Life Insurance Co.
Dallas Texas. 172549.
F No. 1659.

First Section.

I hereby apply to the Southland Life Insurance Company, of Dallas, Texas, for $ 2 units of Insurance on the Retirement Annuity Plan, payable to Susha Fogel as beneficiary, related to me as Sister, if living at my death, otherwise to my executors, administrators or assigns. I reserve the right to change the beneficiary subject to the terms and conditions of the policy, and I desire, if more than one person be named as beneficiary, that the insurance be payable to them, their survivors or survivor, share and share alike.

My full name is: Sam Hannah Fogel.

I was born in the town of ....., County of ..... State of Poland, on the 10th day of the month of July, of the year 1898.

I wish the policy to be dated Oct. 19, 1934 (with ..... months Introductory Term Insurance at a premium of $.....). My age at nearest birthday to date of Policy will, therefore, be 36 years.

I wish premiums payable in (Annual—semi-annual—quarterly) annual instalments of $200.00 and for first such instalment have tendered the following settlement: s.o.d.

I reside at No. Adolphus Street Hotel. R. F. D. No. ....., Town Dallas, County Dallas, State Texas, and am employed by United Investment Company, No. 402 Street Gulf States Bldg., Town Dallas, County Dallas, State Texas. My present occupation is owner and my duties are executive.

For the past ten years my occupations have been above.

I have resided at the given address for 2½ years and in or near the following towns during the last ten years: Dallas.

All communications should be addressed to my business address.

I now have the following insurance in force on my life:

		Amount			Accident	
Date	Company	Life Insurance	Mo. Income on Disability	Double Indemnity	Company	Amount
.....	Southland	15,000	.....	.....	.....	.....

In addition to this application I have now pending the following applications for the amounts and in the companies stated: .....

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I have never applied to any Company for insurance on my life without receiving insurance of the exact amount, kind and premium rate applied for, except as follows:
.....

Two friends who know me well are:
..... of .....
..... of .....

In behalf of myself and of every person who shall have or claim any interest in any policy issued in consequence of this application, consisting of Sections One and Two, I hereby agree: (1) that all statements and answers contained in the application are full, complete and true as therein written; (2) that the policy or policies issued in consequence thereof, shall constitute the entire contract of insurance and the Company shall not be bound in any way by any promise or statement made by or to any agent, or other person, unless such promise, statement or information be reduced to writing and submitted to the Company and made a part of the contract; (3) that there shall be no liability hereunder until a policy shall be issued and manually delivered to me and accepted by while in good good health, and the first premium thereon actually paid, during my lifetime, provided, however, that if said premium is paid in full to said Company's agent at the time of making this application, and if the Company at its Home Office in Dallas, Texas, shall issue a policy on the plan applied for herein, then the insurance (subject to the provisions of the policy applied for) shall be effective from the date of the company's approval of this application; (4) that if I die within two years from date the insurance takes effect from self-destruction, sane or insane, the liability of the Company shall be limited to the total amount of premiums paid on the policy, and no more; (5) that the Company shall have sixty (60) days from the

receipt of the application at its Home Office within which to pass upon it, and if the same shall not be accepted within said time (or if a policy upon a modified or different form from that applied for shall not be issued within such time) it shall be conclusively deemed that this application is declined.

Signed at Dallas, Texas, on the 5 day of October, 1934.

SAM H. FOGEL,
Applicant.

Witnessed by:

L. S. SEGALL,
Soliciting Agent.

This application is hereby extended to cover additional insurance for $..... on the ..... plan to be submitted for my consideration.

....., Applicant.

Note: If the applicant is a woman, have her answer questions on back hereof.

Receipt detached at Home Office.

Mr. Cantrell:

Government's Exhibit No. 17, marked by the reporter, is an application similar to those heretofore introduced, and handed to me by the witness. It is an application for a life insurance policy, by one Sam H. Fogel, and it gives his full name as Sam Hannah Fogel, and states he was born in Poland, on the 10th day of July, 1898, and we offer it in evidence.

POOR COPY

(The instrument referred to was marked Government's Exhibit No. 17 for identification, and is as follows:)

GOV'T EX. No. 17.

Application To
Southland Life Insurance Co.
Dallas, Texas.

173212.
F No. 1660.

First Section.

I hereby apply to the Southland Life Insurance Company, of Dallas, Texas, for $ 2 units of Insurance on the Retirement Annuity Plan, payable to Susha Fogel as beneficiary, related to me as Sister, if living at my death, otherwise to my executors, administrators or assigns. I reserve the right to change the beneficiary subject to the terms and conditions of the policy, and I desire, if more than one person be named as beneficiary, that the insurance be payable to them, their survivors or survivor, share and share alike.

My full name is: Sam Hannah Fogel.

I was born in the town of ....., County of ..... State of Poland, on the 10th day of the month of July, of the year 1898.

I wish the policy to be dated Nov. 19, 1834 (with..... months Introductory Term Insurance at a premium of $.....). My age at nearest birthday to date of Policy will, therefore, be 36 years.

I wish the policy to be dated Nov. 19, 1934 (with ..... quarterly) annual instalments of $200.00 and for a first such instalment have tendered the following settlement: s.o.d.

I reside at No. Adolphus Street Hotel. R. F. D. No. ....., Town Dallas, County Dallas, State Texas, and am employed by United Investment Company, No. 402 Street Gulf States Bldg., Town Dallas, County Dallas, State Texas. My present occupation is owner and my duties are executive.

For the past ten years my occupations have been above.

I have resided at the given address for 2½ years and in or near the following towns during the last ten years: Dallas.

All communications should be addressed to my business address.

I now have the following insurance in force on my life:

		Amount			Accident	
Date	Company	Life Insurance	Mo. Income on Disability	Double Indemnity	Company	Amount
.....	Southland	15,000	.....	.....	.....	.....

In addition to this application I have now pending the following applications for the amounts and in the companies stated: .....

I have never applied to any Company for insurance on my life without receiving insurance of the exact amount, kind and premium rate applied for, except as follows: .....

Two friends who know me well are:

..... of .....

..... of .....

In behalf of myself and of every person who shall have or claim any interest in any policy issued in consequence of this application, consisting of Sections One and Two, I hereby agree: (1) that all statements and answers contained in the application are full, complete and true as therein written; (2) that the policy or policies issued in consequence thereof, shall constitute the entire contract of insurance and the Company shall not be bound in any way by any promise or statement made by or to any agent, or other person, unless such promise, statement or information be reduced to writing and submitted to the Company and made a part of the contract; (3) that there shall be no liability hereunder until a policy shall be issued and manually delivered to me and accepted by while in good good health, and the first premium thereon actually paid, during my lifetime, provided, however, that if said premium is paid in full to said Company's agent at the time of making this application, and if the Company at its Home Office in Dallas, Texas, shall issue a policy on the plan applied for herein, then the insurance (subject to the provisions of the policy applied for) shall be effective from the date of the company's approval of this application; (4) that if I die within two years from date the ininsurance takes effect from self-destruction, sane or insane, the liability of the Company shall be limited to the total amount of premiums paid on the policy, and no more; (5) that the Company shall have sixty (60) days from the receipt of the application at its Home Office within which to pass upon it, and if the same shall not be accepted within said time (or if a policy upon a modified or different form from that applied for shall not be issued within such time) it shall be conclusively deemed that this application is declined.

Signed at Dallas, Texas, on the 5 day of Oct., 1934.

SAM H. FOGEL,
Applicant.

Witnessed by:

L. S. SEGALL,
Soliciting Agent.

This application is hereby extended to cover additional insurance for $..... on the ..... plan to be submitted for my consideration.

....., Applicant.

Note: If the applicant is a woman, have her answer questions on back hereof.

Receipt detached at Home Office.

Mr. Cantrell:

I have here an application handed to me by the witness, marked Government's Exhibit 18, by the reporter, which purports to be executed by Sam H. Fogel, and recites the birth date as the 10th day of July, 1898, stating he was born in Poland, and states his full name as Sam Hannah Fogel. It is application for a life insurance policy, and we offer it in evidence.

(The instrument referred to was marked Government's Exhibit No. 18, and is as follows:)

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GOV'T EX. No. 18.

Application To
Southland Life Insurance Co.
Dallas, Texas.

173767.
F No. 1661.

First Section.

I hereby apply to the Southland Life Insurance Company of Dallas, Texas, for $2 units of Insurance on the Retirement Annuity Plan, payable to Susha Fogel as beneficiary, related to me as Sister, if living at my death, otherwise to my executors, administrators or assigns. I reserve the right to change the beneficiary subject to the terms and conditions of the policy, and I desire, if more than one person be named as beneficiary, that the insurance be payable to them, their survivors or survivor, share and share alike.

My full name is: Sam Hannah Fogel.

I was born in the town of ....., County of ..... State of Poland, on the 10th day of the month of July, of the year 1898.

I wish the policy to be dated Dec. 19, 1934 (with ..... months Introductory Term Insurance at a premium of $.....). My age at nearest birthday to date of Policy will, therefore, be 36 years.

I wish premiums payable in (Annual—semi-annual—quarterly) annual instalments of $200.00 and for first such instalment have tendered the following settlement: s.o.d.

I reside at No. Adolphus Street Hotel. R. F. D. No. ....., Town Dallas, County Dallas, State Texas, and

am employed by United Investment Company, No. 402 Street Gulf States Bldg., Town Dallas, County Dallas, State Texas. My present occupation is owner and my duties are executive.

For the past ten years my occupations have been above.

I have resided at the given address for 2½ years and in or near the following towns during the last ten years: Dallas.

All communications should be addressed to my business address.

I now have the following insurance in force on my life:

		Amount			Accident	
Date	Company	Life Insurance	Mo. Income on Disability	Double Indemnity	Company	Amount
.....	Southland	15,000	.....	.....	.....	.....

In addition to this application I have now pending the following applications for the amounts and in the companies stated: .....

I have never applied to any Company for insurance on my life without receiving insurance of the exact amount, kind and premium rate applied for, except as follows: .....

Two friends who know me well are:
..... of .....
..... of .....

In behalf of myself and of every person who shall have or claim any interest in any policy issued in consequence of this application, consisting of Sections One and Two, I

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hereby agree: (1) that all statements and answers contained in the application are full, complete and true as therein written; (2) that the policy or policies issued in consequence thereof, shall constitute the entire contract of insurance and the Company shall not be bound in any way by any promise or statement made by or to any agent, or other person, unless such promise, statement or information be reduced to writing and submitted to the Company and made a part of the contract; (3) that there shall be no liability hereunder until a policy shall be issued manually delivered to me and accepted by me while in good health, and the first premium thereon actually paid, during my lifetime, provided, however, that if said premium is paid in full to said Company's agent at the time of making this application, and if the Company at its Home Office in Dallas, Texas, shall issue a policy on the plan applied for herein, then the insurance (subject to the provisions of the policy applied for) shall be effective from the date of the company's approval of this application; (4) that if I die within two years from date the ininsurance takes effect from self-destruction, sane or insane, the liability of the Company shall be limited to the total amount of premiums paid on the policy, and no more; (5) that the Company shall have sixty (60) days from the receipt of the application at its Home Office within which to pass upon it, and if the same shall not be accepted within said time (or if a policy upon a modified or different form from that applied for shall not be issued within such time) it shall be conclusively deemed that this application is declined.

Signed at Dallas, Texas, on the 5 day of Nov., 1934.

SAM H. FOGEL,
Applicant.

Witnessed by:

L. S. SEGALL,
Soliciting Agent.

This application is hereby extended to cover additional insurance for $..... on the ..... plan to be submitted for my consideration.

....., Applicant.

Note: If the applicant is a woman, have her answer questions on back hereof.

Receipt detached at Home Office.

Mr. Cantrell:

The witness has handed me an application for life insurance policy, which has been marked by the reporter Government's Exhibit 19, purporting to be signed by Sam H. Fogel, in Dallas, on the fifth day of November, 1934, applying for a life insurance policy, wherein he states that his birth date is the 10th day of July, 1898, and he was born in Poland, among other things, Your Honor, and we offer it in evidence.

(The instrument referred to was marked Government's Exhibit No. 19 for identification, and is as follows:)

GOV'T EX. No. 19.

Application To
Southland Life Insurance Co.
Dallas, Texas. 174467.
F No. 1662.

First Section.

I hereby apply to the Southland Life Insurance Company, of Dallas, Texas, for $ 2 units of Insurance on the Retirement Annuity Plan, payable to Susha Fogel as beneficiary, related to me as Sister, if living at my death, otherwise to my executors, administrators or assigns. I

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reserve the right to change the beneficiary subject to the terms and conditions of the policy, and I desire, if more than one person be named as beneficiary, that the insurance be payable to them, their survivors or survivor, share and share alike.

My full name is: Sam Hannah Fogel.

I was born in the town of ....., County of ..... State of Poland, on the 10th day of the month of July, of the year 1898.

I wish the policy to be dated Jan. 19th, 1935 (with..... months Introductory Term Insurance at a premium of $.....). My age at nearest birthday to date of Policy will, therefore, be 37 years.

I wish premiums payable in (Annual—semi-annual—quarterly) annual installments of $200.00 and for first such instalment have tendered the following settlement: s.o.d.

I reside at No. Adolphus Street Hotel. R. F. D. No. ....., Town Dallas, County Dallas, State Texas, and am employed by United Investment Company, No. 402 Street Gulf States Bldg., Town Dallas, County Dallas, State Texas. My present occupation is owner and my duties are executive.

For the past ten years my occupations have been above.

I have resided at the given address for 2½ years and in or near the following towns during the last ten years: Dallas.

All communications should be addressed to my business address.

I now have the following insurance in force on my life:

		Amount			Accident	
Date	Company	Life Insurance	Mo. Income on Disability	Double Indemnity	Company	Amount
.....	Southland	15,000	.....	.....	.....	.....

In addition to this application I have now pending the following applications for the amounts and in the companies stated: .....

I have never applied to any Company for insurance on my life without receiving insurance of the exact amount, kind and premium rate applied for, except as follows: .....

Two friends who know me well are:
..... of .....
..... of .....

In behalf of myself and of every person who shall have or claim any interest in any policy issued in consequence of this application, consisting of Sections One and Two, I hereby agree: (1) that all statements and answers contained in the application are full, complete and true as therein written; (2) that the policy or policies issued in consequence thereof, shall constitute the entire contract of insurance and the Company shall not be bound in any way by any promise or statement made by or to any agent, or other person, unless such promise, statement or information be reduced to writing and submitted to the Company and made a part of the contract; (3) that there shall be no liability hereunder until a policy shall be issued and manually delivered to me and accepted by while in good good health, and the first premium thereon actually paid, during my lifetime, provided, however, that if said premium is paid in full to said Company's agent at the time

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of making this application, and if the Company at its Home Office in Dallas, Texas, shall issue a policy on the plan applied for herein, then the insurance (subject to the provisions of the policy applied for) shall be effective from the date of the company's approval of this application; (4) that if I die within two years from date the in-insurance takes effect from self-destruction, sane or insane, the liability of the Company shall be limited to the total amount of premiums paid on the policy, and no more; (5) that the Company shall have sixty (60) days from the receipt of the application at its Home Office within which to pass upon it, and if the same shall not be accepted within said time (or if a policy upon a modified or different form from that applied for shall not be issued within such time) it shall be conclusively deemed that this application is declined.

Signed at Dallas, Texas, on the 5 day of Nov., 1934.

SAM H. FOGEL,
Applicant.

Witnessed by:

L. S. SEGALL,
Soliciting Agent.

This application is hereby extended to cover additional insurance for $..... on the ..... plan to be submitted for my consideration.

....., Applicant.

Note: If the applicant is a woman, have her answer questions on back hereof.

Receipt detached at Home Office.

Mr. Cantrell:

The Government has marked, as Government's Exhibit 20, another application for a life insurance policy, handed

to me by the witness, which purports to be signed by Sam H. Fogel, on the 31st day of January, 1935, in Dallas, Texas, wherein he recites his birth date as being the 10th day of July, 1898, and he was born in Poland. We offer it in evidence, Your Honor.

(The instrument referred to was marked Government's Exhibit No. 20 for identification, and is as follows:)

GOV'T EX. No. 20.

Application To
Southland Life Insurance Co.
Dallas, Texas. 175244.
F No. 1663.

First Section.

I hereby apply to the Southland Life Insurance Company, of Dallas, Texas, for $ 2 units of Insurance on the Retirement Annuity Plan, payable to Susha Fogel as beneficiary, related to me as Sister, if living at my death, otherwise to my executors, administrators or assigns. I reserve the right to change the beneficiary subject to the terms and conditions of the policy, and I desire, if more than one person be named as beneficiary, that the insurance be payable to them, their survivors or survivor, share and share alike.

My full name is: Sam Hannah Fogel.

I was born in the town of ....., County of ..... State of Poland, on the 10th day of the month of July, of the year 1898.

I wish the policy to be dated Feb. 19, (with ..... months Introductory Term Insurance at a premium of

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$.....). My age at nearest birthday to date of Policy will, therefore, be 37 years.

I wish premiums payable in (Annual—semi-annual—quarterly) annual installments of $200.00 and for first such instalment have tendered the following settlement: s.o.d.

I reside at No. Adolphus Street Hotel. R. F. D. No. ....., Town Dallas, County Dallas, State Texas, and am employed by United Investment Company, No. 402 Street Gulf States Bldg., Town Dallas, County Dallas, State Texas. My present occupation is owner and my duties are executive.

For the past ten years my occupations have been above.

I have resided at the given address for 3½ years and in or near the following towns during the last ten years: Dallas.

All communications should be addressed to my business address.

I now have the following insurance in force on my life:

		Amount			Accident	
Date	Company	Life Insurance	Mo. Income on Disability	Double Indemnity	Company	Amount
.....	Southland	15,000	.....	.....	.....	.....

In addition to this application I have now pending the following applications for the amounts and in the companies stated: .....

I have never applied to any Company for insurance on my life without receiving insurance of the exact amount,

kind and premium rate applied for, except as follows:
.....

Two friends who know me well are:
..... of .....
..... of .....

In behalf of myself and of every person who shall have or claim any interest in any policy issued in consequence of this application, consisting of Sections One and Two, I hereby agree: (1) that all statements and answers contained in the application are full, complete and true as therein written; (2) that the policy or policies issued in consequence thereof, shall constitute the entire contract of insurance and the Company shall not be bound in any way by any promise or statement made by or to any agent, or other person, unless such promise, statement or information be reduced to writing and submitted to the Company and made a part of the contract; (3) that there shall be no liability hereunder until a policy shall be issued and manually delivered to me and accepted by while in good good health, and the first premium thereon actually paid, during my lifetime, provided, however, that if said premium is paid in full to said Company's agent at the time of making this application, and if the Company at its Home Office in Dallas, Texas, shall issue a policy on the plan applied for herein, then the insurance (subject to the provisions of the policy applied for) shall be effective from the date of the company's approval of this application; (4) that if I die within two years from date the ininsurance takes effect from self-destruction, sane or insane, the liability of the Company shall be limited to the total amount of premiums paid on the policy, and no more; (5) that the Company shall have sixty (60) days from the receipt of the application at its Home Office within which to pass upon it, and if the same shall not be accepted

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within said time (or if a policy upon a modified or different form from that applied for shall not be issued within such time) it shall be conclusively deemed that this application is declined.

Signed at Dallas, Texas, on the 31 day of January, 1935.

SAM H. FOGEL,
Applicant.

Witnessed by:

L. S. SEGALL,
Soliciting Agent.

This application is hereby extended to cover additional insurance for $..... on the ..... plan to be submitted for my consideration.

....., Applicant.

Note: If the applicant is a woman, have her answer questions on back hereof.

Receipt detached at Home Office.

Mr. Cantrell:

The witness has handed me another application for a life insurance policy, Your Honor, which I am handing to the reporter, and ask him to mark as Government's Exhibit 21.

(The instrument referred to was marked Government's Exhibit No. 21 for identification.)

Mr. Cantrell:

It purports to be signed by one Sam H. Fogel, in Dallas, Texas, on the 12th day of March, 1935, and purports to

give his birth date as the 10th day of July, 1898; he states he was born in Poland. We offer it in evidence.

(The instrument, Government's Exhibit No. 21 is as follows:)

GOV'T EX. No. 21.

Application To
Southland Life Insurance Co.
Dallas, Texas. 175904.
F No. 1665.

First Section.

I hereby apply to the Southland Life Insurance Company, of Dallas, Texas, for $ 2 units of Insurance on the Retirement Annuity Plan, payable to Susha Fogel as beneficiary, related to me as Sister, if living at my death, otherwise to my executors, administrators or assigns. I reserve the right to change the beneficiary subject to the terms and conditions of the policy, and I desire, if more than one person be named as beneficiary, that the insurance be payable to them, their survivors or survivor, share and share alike.

My full name is: Sam Hannah Fogel.

I was born in the town of ....., County of ..... State of Poland on the 10th day of the month of July, of the year 1898.

I wish the policy to be dated May 19, 1935 (with..... months Introductory Term Insurance at a premium of $.....). My age at nearest birthday to date of Policy will, therefore, be 37 years.

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I wish premiums payable in (Annual—semi-annual—quarterly) annual instalments of $200.00 and for first such instalment have tendered the following settlement: s.o.d.

I reside at No. Adolphus Street Hotel. R. F. D. No. ....., Town Dallas, County Dallas, State Texas, and am employed by United Investment Company, No. 402 Street Gulf States Bldg., Town Dallas, County Dallas, State Texas. My present occupation is owner and my duties are executive.

For the past ten years my occupations have been above.

I have resided at the given address for 3 years and in or near the following towns during the last ten years: Dallas.

All communications should be addressed to my business address.

I now have the following insurance in force on my life:

		Amount			Accident	
Date	Company	Life Insurance	Mo. Income on Disability	Double Indemnity	Company	Amount
.....	Southland	15,000	.....	.....	.....	.....

In addition to this application I have now pending the following applications for the amounts and in the companies stated: .....

I have never applied to any Company for insurance on my life without receiving insurance of the exact amount, kind and premium rate applied for, except as follows: .....

Two friends who know me well are:

.... of .....

..... of .....

In behalf of myself and of every person who shall have or claim any interest in any policy issued in consequence of this application, consisting of Sections One and Two, I hereby agree: (1) that all statements and answers contained in the application are full, complete and true as therein written; (2) that the policy or policies issued in consequence thereof, shall constitute the entire contract of insurance and the Company shall not be bound in any way by any promise or statement made by or to any agent, or other person, unless such promise, statement or information be reduced to writing and submitted to the Company and made a part of the contract; (3) that there shall be no liability hereunder until a policy shall be issued and manually delivered to me and accepted by while in good good health, and the first premium thereon actually paid, during my lifetime, provided, however, that if said premium is paid in full to said Company's agent at the time of making this application, and if the Company at its Home Office in Dallas, Texas, shall issue a policy on the plan applied for herein, then the insurance (subject to the provisions of the policy applied for) shall be effective from the date of the company's approval of this application; (4) that if I die within two years from date the ininsurance takes effect from self-destruction, sane or insane, the liability of the Company shall be limited to the total amount of premiums paid on the policy, and no more; (5) that the Company shall have sixty (60) days from the receipt of the application at its Home Office within which to pass upon it, and if the same shall not be accepted within said time (or if a policy upon a modified or different form from that applied for shall not be issued within

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such time) it shall be conclusively deemed that this application is declined.

Signed at Dallas, Texas, on the 12 day of March, 1935.

SAM H. FOGEL,
Applicant.

Witnessed by:

L. S. SEGALL,
Soliciting Agent.

This application is hereby extended to cover additional insurance for $..... on the ..... plan to be submitted for my consideration.

....., Applicant.

Note: If the applicant is a woman, have her answer questions on back hereof.

Receipt detached at Home Office.

Mr. Cantrell:

I might ask you this, Mr. Walker, if all of these records which you have produced, and which you have handed me, and which I have offered in evidence, are they the original records of your company?

A. They are.

Mr. Cantrell:

Were they produced in the ordinary course of business of your company?

A. That is right.

Mr. Cantrell:

And they are from your official files?

A. They are. This is Segall, he is an agent for the company.

Mr. Hood:
Is he still with the company?

A. He is.

Mr. Hood:
Is he available?

A. Yes, sir, his home is in Dallas.

Mr. Hood:
Would you mind, when you leave the stand, calling him, and having him appear here in Court, and tell him we will have process issued?

A. No, not at all.

Mr. Hood:
That is all. In other words, Mr. Segall's name appears on these applications for insurance, which purport to be signed by Sam H. Fogel, the defendant in this case, and Mr. Segall is shown as soliciting agent. He is still with your Company?

A. That is right.

Mr. Hood:
And will you telephone him, and have him come up, please?

A. I will.

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Mr. Hood:

If you don't mind, please, sir, we will ask you to leave these for the time being.

Cross Examination.

By Mr. Dailey:

Q. Mr. Walker, did you know Hilda Levy?

A. No.

Q. You did not know her?

A. No.

Q. How long have you been with the company?

A. I have been with the Southland Life directly since 1938, March of 1938.

Q. March of 1938. You were not with the Southland Life Insurance Company during the time these applications were made, were you?

A. No.

Q. And I believe you testified that you don't know Sam Fogel's signature?

A. No.

Q. And you don't know whether or not he signed those applications?

A. No.

Q. Now, insurance policies, generally speaking, of course, the premium is based on the age of the insured, is that not right?

A. That is right.

Q. Could you tell the Court approximately the difference between a man, seven years would make in an insurance policy, the difference seven years in age would be on a $10,000.00 policy?

A. It would depend on the kind of insurance.

Q. Well, I mean the kind of insurance that this application, these applications refer to.

Mr. Hood:

Your Honor, we object to that as immaterial; it seems he is trying to show up his client here committed fraud on the insurance company.

The Court:

Well, we will hear it, counsel, unless it takes up a lot of time.

(By Mr. Dailey):

Q. The kind of application there, for instance, the one which Hilda Levy took, when she was the agent, what would be the difference in premium in that policy, five years difference in age, for instance?

A. I think that is the first one.

Q. The first one?

Mr. Hood:

Is this the policy?

A. The first one.

Mr. Hood:

Do you want the application? There is the policy.

Mr. Cantrell:

Look at Government's Exhibit No. 1, Clyde.

Mr. Hood:

Yes, here it is.

A. It would be in the neighborhood of around $25.00 a year on that particular policy.

(By Mr. Dailey):

Q. On the one that has been—

A. On the premium.

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Q. Exhibit 1?

A. Yes, the premium would be approximately, now, that was just merely an estimate.

Q. Yes, but, to the best of your judgment?

A. Yes.

Q. You know about what it would be, do you not?

A. Yes.

Q. Now, your company has very often had occasion where people made applications for insurance, and gave an age younger than they were, have they not?

Mr. Hood:

We object to that, Your Honor, as immaterial and irrelevant in the trial of this cause.

The Court:

We think so.

Mr. Dailey:

Very well. I believe that's all.

Re-Direct Examination.

By Mr. Cantrell:

Q. I might ask you one further question. Do you know Mr. J. D. Churchill?

A. Yes, sir.

Q. Are you familiar with his signature?

A. Yes, I know his signature.

Q. I will ask you to examine that letter, right there, please, sir, and state whether or not that is Mr. Churchill's signature?

A. That is.

Mr. Cantrell:

Thank you, that is all. Just a minute, I will offer the letter for the purposes of identification only now.

(The instrument referred to was marked for identification Government's Exhibit No. 22.)

P. P. Ballowe, a witness called on behalf of the Government, being first duly sworn, testified as follows:

191 Direct Examination.

By Mr. Hood:

Q. Your name is Mr. P. P. Ballowe?

A. That is right, sir.

Q. Mr. Ballowe, you are an attorney and member of the Dallas Bar?

A. Yes, sir.

Q. And, Mr. Ballowe, are you acquainted with the defendant in this cause, Sam H. Fogel, or Sam Hannah Fogel?

A. Yes, sir, I know him.

Q. Approximately how long have you known him?

A. Well, I would say it was about ten years, something like that.

Q. You then, at one time, if you are not now, were also a notary public, weren't you, Mr. Ballowe?

A. Yes, sir, I am still a notary public.

Q. Still a notary public. I show you Government's Exhibit No. 1, Mr. Ballowe, which purports to be an assignment of life insurance policy as collateral, and dated March 24, 1943, signed Sam H. Fogel, and the acknowledgment taken, purported to be taken by you. Did you take that acknowledgment?

A. Yes, sir, that is my signature, and my handwriting, and I don't remember the instance.

Q. I am sure not.

A. But, I am sure that I did.

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Q. And is that the signature of the Sam H. Fogel—you are familiar with his signature, and, of course, that is his signature?

A. Yes, sir, I would say that is his signature.

Q. And you have represented him in quite a few matters, or some matters, that is true, is it not?

A. That is true.

Q. And you know, and you are familiar with his signature?

A. Yes, sir.

Q. And he appeared that day before you, and you took that signature and acknowledgment, he executed it as his signature?

A. Yes, sir, otherwise, I don't know why I would have.

Q. Since you have stated you are familiar with his signature, I will show you Government's Exhibit No. 4 signed "Sam H. Fogel", dated the 15th of June, 1934. Do you say that is the signature of Sam H. Fogel?

Mr. Dailey:

Your Honor, we object to that, the witness has not been qualified as an expert on handwriting, we object to it; there has not been sufficient predicate laid to enable him to testify as to any signature on any of those applications, Your Honor; the one that he acknowledged, that was acknowledged before him—

The Court:

I will hear counsel on it.

Mr. Hood:

Your Honor, I thought it would expedite this matter; we sent for a representative of the insurance company, and if they are denying this insurance was issued to this man—

The Court:

We will let him testify if he may, or can, that it appears to be the same signature.

(Mr. Hood):

Q. Does that appear to you to be the same signature?

A. That would be my—

Q. Opinion?

A. —opinion about it.

Q. All right, I hand you Government's Exhibit No. 21, which also is an application for insurance, dated March 12, 1935, do you say that also appears to be the signature of Sam H. Fogel?

A. Yes, sir, I would.

Q. It would?

Mr. Dailey:

For the purpose of the record, will the Court allow us our exception to all this testimony?

The Court:

All right.

(By Mr. Hood):

Q. Government's Exhibit No. 20, I will ask you the same question. That is also an application for insurance, dated January 1935. Do you say that that appears to be the signature of Sam H. Fogel?

A. Yes, sir.

Q. The defendant in this cause?

A. Yes, sir.

Q. I will ask you the same question with reference to Government's Exhibit No. 19, what is your response to that?

A. The same answer.

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Q. I hand you Government's Exhibit 18, after you observe that signature on that application, would you say the—

A. I make the same answer.

Q. The same answer. Government's Exhibit No. 17, I will ask you the same question on that?

A. The same answer.

Q. Government's Exhibit No. 16, which is also an application for insurance, what is your response to that?

A. I make the same answer.

Q. The same answer?

A. It is merely my opinion.

Q. I understand it is your opinion.

A. That it is his signature, I wouldn't undertake to say that it was, definitely, because I just—

Q. Government's Exhibit 15, putting the same question to you, what would your answer be?

A. The same answer.

Q. All right, Government's Exhibit No. 14, which is also an application, purporting to be signed by Sam H. Fogel?

A. The same answer.

Q. The same answer. Government's Exhibit No. 13?

A. The same answer.

Q. There is one, Government's Exhibit No. 7, purported to be signed S. H. Fogel, Sam H. Fogel, S. H. Fogel?

A. The answer is the same.

Q. The same answer?

A. Yes, sir.

Q. All right, here is Government's Exhibit No. 2 which purports to be an assignment of life insurance policy, but I have already asked you about that, pardon me, you took the acknowledgment on that. Here is Government's Exhibit No. 1, S. H. Fogel, would you say, in

your opinion, that is the signature of Samuel Hannah Fogel?

A. Yes, sir.

Q. That is dated 1927, where he says he was born in Melva, Poland, Sam Hannah Fogel was his name, born July 10, 1898.

Mr. Dailey:

Your Honor, may I ask this witness this question as further grounds of objection to Government's Exhibit No. 1?

The Court:

Very well.

Mr. Dailey:

Mr. Ballowe, were you representing Mr. Fogel at that time as his attorney?

A. At the time I took this acknowledgment?

Mr. Dailey:

Yes, sir.

A. To that assignment?

Mr. Dailey:

Yes, sir.

A. As I recall, that is dated in '43, and to tell you the truth, I just could not be accurate when I represented him and when I didn't, because I have represented Mr. Fogel, oh, in a fair number of matters, from time to time, and I was evidently requested to take an acknowledgment on that paper there for—

Mr. Dailey:

It is Exhibit 2, Mr. Reporter. This was an assignment for a loan, is that right?

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A. I didn't examine it, I understand that it was, I assumed that it had some kind of connection with an insurance policy.

Mr. Dailey:

That says there is an assignment of life insurance as collateral, is that on there?

A. Yes, that is noted in it, it was all assigned.

Mr. Dailey:

And at that time, from this paper here, why, it would appear that he was making—borrowing some money?

A. Yes, sir, I judge that.

Mr. Dailey:

And he was putting that up?

A. I notice the witness here is Charlie Davis.

Mr. Dailey:

And he is putting up his policy as collateral?

A. I would assume that, yes, sir.

Mr. Dailey:

And, can you say whether, or not, in that transaction when he was trying to borrow this money that you were representing him as his attorney?

A. Mr. Dailey, my impression would be that I was handling, or attempting to procure him a loan, I mean, to aid him in getting a loan, as we were doing some work for him, or I was; he was there in the office, and produced that; he probably asked me to take his acknowledgment to it.

Mr. Dailey:

You don't hold yourself out as a notary public for hire, do you, Mr. Ballowe?

A. No, I very seldom ever get any money for notary work.

Mr. Dailey:

You may take acknowledgments on occasions, that is usually of interest to you and your profession, is that right?

A. I would say generally it is an accommodation.

Mr. Dailey:

I see. I further object to the introduction of that exhibit, if the Court please, on the ground that it was information—

The Court:

I did not get the request?

Mr. Dailey:

On the ground it was information furnished by Fogel to his lawyer, Mr. Ballowe, and therefore, would be privileged and confidential.

The Court:

Overrule the objection.

(By Mr. Hood):

Q. I show you Government's Exhibit No. 12, Mr. Ballowe, which is purported to be signed by Sam H. Fogel, application for insurance, and I will ask you to state whether or not in your opinion that is Fogel's signature?

A. Yes, sir.

Q. All right, I show you Government's Exhibit No. 5, which purports to be an application for a loan, which we only introduce for the purpose of comparative purposes on signatures, and I will ask you to look at that signature, and state whether or not, in your opinion, is the signature of Sam H. Fogel?

A. Yes, sir.

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Q. The same situation as is with reference to Government's Exhibit 4, which we are not offering, the escrow exhibit, but merely a signature for comparative purposes, I will ask you to observe that, and state whether or not that is, in your opinion, the signature of Sam H. Fogel?

A. Yes, sir.

Q. The same situation with Government's Exhibit 8, we are not necessarily offering the contents of it, but only the signature for comparison purposes, and state whether or not, in your opinion, that is the signature of Sam H. Fogel?

A. I would say so.

Q. All right, Government's Exhibit No. 9, I will propound the same question, and what will your answer be?

A. The same answer, that is his signature.

Mr. Hood:

This has not been marked.

(The instrument referred to was marked Government's Exhibit No. 23 for identification.)

(By Mr. Hood):

Q. Your Honor, Government's Exhibit No. 23 is also an application for insurance, purported to be signed by Sam H. Fogel, dated April 13, 1934, saying he was born in Poland, and saying he was born July 10, 1898. Now, Mr. Ballowe, I will ask you to observe that signature, and state whether or not, in your opinion, that is the signature of Sam H. Fogel?

A. In my opinion, yes.

Mr. Hood:

If we have not, we move the introduction of all these exhibits, Your Honor.

(Government's Exhibits Nos. 22 and 23 are as follows:)

(Government's Exhibit No. 22:)

Southland Life Insurance Company,
Dallas, Texas.

November 5, 1945.

Mr. Sam Hannah Fogel,
8627 Inwood Road,
Dallas, Texas.

Policy No. 92986.

Dear Mr. Fogel:

The above numbered policy is the first policy issued by this Company on your life, it having been issued as of March 29, 1927. Your residence at that time as given in your application was the Sanger Hotel Apartments, Dallas, Texas and your business address was Southern Industrial Corporation, South Akard Street, Dallas, Texas. Our records show the following address changes:

Changed From—Changed To	Date
Sanger Hotel—201 Andrews Bldg.	11-18-31
201 Andrews Bldg.—402 Gulf States Life Bldg.	1-27-33
402 Gulf States Life Bldg.—509 Praetorian Bldg.	5-6-35
509 Praetorian Bldg.—1513½ Main Street	8-17-37
1513½ Main Street—367 Riverside Dr. Apt. 4B N. Y.	5-25-44

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367 Riverside Dr., Apt. 4B, N. Y.—8627 Inwood Road 8-14-44

Our Records show that the notices for premiums as they fell due on your various policies issued by this Company on your life were sent to the addresses shown above, Trusting that this is the information you desire, we are,

Yours very truly,
(Sgd.) J. D. CHURCHILL,
Assistant Actuary.

GOV'T EX. No. 23.
Application To
Southland Life Insurance Co.
Dallas, Texas. 168225.
F No. 1676.

First Section.

I hereby apply to the Southland Life Insurance Company, of Dallas, Texas, for $ 2 Units of Insurance on the Retirement Annuity Plan, payable to Susha Fogel, as beneficiary, related to me as Sister, if living at my death, otherwise to my executors, administrators or assigns. I reserve the right to change the beneficiary subject to the terms and conditions of the policy, and I desire if more than one person be named as beneficiary, that the insurance be payable to them, their survivors or survivor, share and share alike.

My full name is: Sam Hannah Fogel. I was born in the Town of Poland, County of ....., State of ..... on the 10 day of the month of July of the year 1888.

I wish the policy to be dated at issue (with .... months Introductory Term Insurance at a premium of $ .....). My age at nearest birthday to date of Policy will, therefore, be 36 years.

I wish premiums payable in (Annual—semi-annual—quarterly) Annual instalments of $200.00 and for first such instalment have tendered the following settlement: Sod.

I reside at No. ..... Street, Adolphus Hotel, R. F. D. No. ....., Town Dallas, County Dallas, State Tex., and am employed by United Investment Co., No. 402 Street Gulf States Bldg., Town Dallas, County Dallas, State Tex.

My present occupation is owner and my duties are executive.

For the past ten years my occupations have been above.

I have resided at the given address for 2½ years and in or near the following town during the last ten years: Dallas.

All communications should be addressed to my business address.

I now have the following insurance in force on my life:

		Amount			Accident	
Date	Company	Life Insurance	Mo. Income on Disability	Double Indemnity	Company	Amount
.....	Southland	15,000	.....	.....	.....	.....

In addition to this application I have now pending the following applications for the amounts and in the companies stated: .....

I have never applied to any Company for insurance on my life without receiving insurance of the exact amount, kind and premium rate applied for, except as follows:

Two friends who know me well are:

..... of .....

..... of .....

In behalf of myself and of every person who shall have or claim any interest in any policy issued in consequence

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of this application, consisting of Sections One and Two, I hereby agree: (1) that all statements and answers contained in this application are full, complete and true as therein written; (2) that the policy or policies issued in consequence thereof, shall constitute the entire contract of insurance and the Company shall not be bound in any way by any promise or statement made by or to any agent, or other person, unless such promise, statement or information be reduced to writing and submitted to the Company and made a part of the contract; (3) that there shall be no liability hereunder until a policy shall be issued and manually delivered to me and accepted by me while in good health, and the first premium thereon actually paid, during my lifetime, provided, however, that if said premium is paid in full to said Company's agent at the time of making this application, and if the Company at its Home Office in Dallas, Texas, shall issue a policy on the plan applied for herein, then the insurance (subject to the provisions of the policy applied for) shall be effective from the date of the Company's approval of this application; (4) that if I die within two years from date the insurance takes effect from self-destruction, sane or insane, the liability of the Company shall be limited to the total amount of premiums paid on the policy, and no more; (5) that the Company shall have sixty (60) days from the receipt of the application at its Home Office within which to pass upon it, and if the same shall not be accepted within said time (or if a policy upon a modified or different form from that applied for shall not be issued within such time) it shall be conclusively deemed that this application is declined.

Signed at Dallas, on the 13 day of April, 1934.

SAM H. FOGEL,
Applicant.

Witnessed by:

L. S. SEGALL,
Soliciting Agent.

This application is hereby extended to cover additional insurance for $..... on the ..... plan to be submitted for my consideration.

....., Applicant.

Note: If the applicant is a woman, have her answer questions on back hereof.

Receipt detached at Home Office.

Mr. Hood:
I want to mark this.

(The instrument referred to was marked Government's Exhibit No. 24 for identification.)

Mr. Hood:
Your Honor, we offer Exhibit No. 24, which is the appearance bond filed in this cause, executed by S. H. Fogel, about which there will be no dispute, I imagine, and we offer the signature for comparison purposes only in connection with the other matters.

(Government's Exhibit No. 24 is as follows:)

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204 GOV'T EX. No. 24.

Final Recognizance Bond.

No. 284.

United States of America,
Northern District of Texas,
Dallas Division.

Be It Remembered, that on this 30 day of October, A. D., 1946, before me, the undersigned United States Commissioner for said District, personally came Samuel Hannah Fogel, a principal, and W. R. Large, U. S. Treas. Bonds, sureties, Dep. with US Dist. Clk.—Rct. attchd., and jointly and severally acknowledged themselves to owe the United States of America the sum of $1000.00 Dollars to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to-wit:

The Condition of this recognizance is such, that if the said principal shall personally appear before the United States District Court for the Northern District of Texas on the first day of the next term thereof to begin and to be held at the City of Dallas, on the 4th day of November, A. D., 1946, at 10:00 A. M., and from time to time and term to term thereafter to which the case may be continued, then and there to answer to the charge of having on or about the .. day of ..... from 1942 to date, A. D., 1946, within the last named District, unlawfully fail to register for military service as required under the Selec. Tfg. & Svs. Act, and such other charges, matters and things as may then and there be brought against said principal, and abide the orders and judgment of said Court, and not depart without leave thereof, then

this recognizance to be void, otherwise to remain in full force and virtue.

S. H. FOGEL,
Principal.

Address: 8511 Inwood Road.
'Phone: D-42123.

.....
Surety.

Address: .....
'Phone: .....

W. R. LARGE,
Surety.

Address: .....
'Phone: .....

Taken, subscribed and acknowledged in my presence on the day and year first above mentioned.

WILLIAM M. HILL,
(Seal) United States Commissioner as aforesaid.

Mr. Hood:
I believe that is all from Mr. Ballowe.

Mr. Dailey:
No questions, Mr. Ballowe.

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GLENN A. TORRENCE, being recalled as a witness on behalf of the Government, being heretofore duly sworn, testified as follows:

207 Direct Examination.

By Mr. Cantrell:

Q. You are Mr. Torrence, are you not?

A. That is correct.

Q. You were already on the stand, and sworn a little earlier?

A. Yes, sir.

Q. I asked him if he is the same Mr. Torrence that was on the stand a little earlier for the defendant, just placing the witness. You are an officer of the Government, with the Immigration and Naturalization Service?

A. Yes, sir.

Q. Now, I hand you, Mr. Torrence, what has been marked for identification purposes as Government's Exhibit No. 22, and ask you if you know what that document is?

A. That is a letter submitted to our Service by Mr. Sam Hannah Fogel, in support of his application for registration.

Q. To whom does it purport to be addressed?

A. It is addressed to Mr. Sam Hannah Fogel, 8627 Inwood Road, Dallas, Texas, and it is dated November 5, 1945.

Q. By whom?

A. By the Southland Life Insurance Company, of Dallas, Texas, and is signed by J. D. Churchill, Assistant Actuary.

Q. Well, just read that letter, Mr. Torrence.

Mr. Dailey:

We object to it, if the Court please, because there has been no predicate laid for the introduction of that testi-

mony; it would be merely encumbering the record by him reading it, we are going to object to the introduction for the reason no proper predicate has been laid for its introduction.

Mr. Cantrell:

If the Court please, we had it properly identified by the previous witness on the stand. We identified the signature of the person who signed it. Mr. Torrence testified it was given to him by this defendant, and the contents themselves will show their appropriateness to this proceeding, Your Honor.

Mr. Dailey:

I understood him to say it was from the Southland Life Insurance Company.

Mr. Cantrell:

It is, but I proved up the signature by the preceding witness.

The Court:

I expect, Mr. District Attorney, you had better get an expert to testify, we are going to have to pass this case over for a day or two, and we have the custodian to say that appeared to be such, and you may select certain ones, and submit them to an expert.

Mr. Hood:

If the Court please, this letter was written by the Southland Life Insurance Company, and all these policies were issued by the Southland Life Insurance Company, and this letter is addressed to the defendant, and the defendant, himself, turned this over to these authorities, and we are just offering these, to tie him up with these insurance policies.

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Mr. Dailey:
That would be rank hearsay, Your Honor, anything the Southland Life Insurance Company—

The Court:
We will admit the letter, I thought the same one.

Mr. Hood:
No, it is a letter addressed to this defendant, he turned over to the Immigration authorities.

The Court:
All right.

A. Shall I read the letter?

Mr. Hood:
Yes.

(Government's Exhibit No. 22 was read by the witness.)

(By Mr. Cantrell):
Q. Mr. Torrence, I believe you testified that letter was given to you by the defendant, Sam Hannah Fogel?
A. Yes, sir.
Q. In connection with what, Mr. Torrence?
A. In connection with his application for a certificate of lawful entry.
Q. That is all.
A. On registering, as you may know—

Mr. Cantrell:
I offer Government's Exhibit No. 22 in evidence, Your Honor.

Mr. Dailey:

We object to it, if the Court please, as being rank hearsay, no proper predicate has been laid for its introduction, and whatever the Southland Life Insurance Company might say there is not binding on this defendant.

The Court:

Overrule the objection.

Mr. Dailey:

Exception.

CHARLES YOUNG, a witness called on behalf of the Government, being first duly sworn, testified as follows:

208 Direct Examination.

By Mr. Cantrell:

Q. For the purpose of the record, you are Mr. Charley Young?

A. Yes, sir.

Q. Deputy United States Marshal, and you were sworn earlier, were you not?

A. I was.

Q. Mr. Young, do you know the defendant, Sam Hannah Fogel?

A. I do.

Q. Did you have occasion at any time to make up a card on him, or a record, for the United States Marshal?

A. I did.

Q. Do you have that record with you?

A. Yes, sir.

Q. I wonder if you would examine it, and state to the Court what that record shows as to the statements of this defendant as to his birth date?

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A. He gave his birthday as 7-10-1898, that is July 10, 1898.

Q. 1898. Well, what was the occasion of your office taking that record from him?

A. Well, we had a warrant for his custody, for violation of the Selective Service Act.

Q. Did that show a description also?

A. Yes, sir.

Q. Read the description, please.

A. Well, he gave his address as 8511 Inwood Road, Dallas, Texas, born in Poland; he did not give the name of the town; the date was July 10, 1898; the height, five foot eight; weight, 185 pounds; eyes, brown; hair, gray-black; complexion, ruddy. build, stout.

Mr. Cantrell:

That is all, thank you, Mr. Young. Your witness, counsel.

Cross Examination.

By Mr. Dailey:

Q. What is the date of that information that you have there, Charley?

A. October 30, 1946.

Q. Yes, sir. He was in custody of you at the time he gave that to you?

A. That is correct.

Q. And you take that from everybody that is arrested, do you not?

A. Yes, sir.

Mr. Dailey:

I believe that is all, thank you.

Mr. Hood:

Your Honor, we had another witness in connection with these policies. We want to establish the soliciting agent who took the applications on this insurance, and we are informed he is not in the office right now, and since Your Honor said he will pass the case over a day or two, we do not—

The Court:

We will hold the case open for another paper, and we will hear him at that time.

Mr. Hood:

We can get Mr. Segall.

The Court:

If counsel feel disposed, we can have it later, but the Court would like for each side to sum up its evidence in ten minutes each.

Mr. Dailey:

I would much rather do that, after I get this other testimony in, if that suits the Court?

The Court:

All right.

Mr. Dailey:

After the Court recesses.

Mr. Hood:

This is the only thing, I suppose, Your Honor. Mr. Cantrell and I both have to leave, and I think Mr. Dailey has some business to attend to in Wichita Falls, we have to leave this coming Sunday morning, and we will probably be up there two or three days, and we do not want

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to inconvenience Your Honor, any schedule of this Court; I thought we had better let that fact be known.

The Court:
What other information does counsel have as to the date of the birth as given by the registration at Waxahachie?

Mr. Dailey:
If Your Honor please, I don't have the slightest idea, but the defendant says he gave his correct age at the time he registered at Waxahachie under the Selective Service Act in World War I.

The Court:
That was before he signed these instance policies?

Mr. Dailey:
Yes, sir, it was, it was in 1917, somewhere around 1917, and if the Government will allow, I have these two witnesses from Philadelphia, there is some evidence there that he gave his name as ..... born in Melva, Poland, and I wanted to establish by these other witnesses, and so they can go on home to Philadelphia, that Melva, Poland is practically the same city as given on this card here.

The Court:
All right, call them around.

NATHAN SELCOVITS, being recalled on behalf of the defendant, being heretofore duly sworn, testified as follows:

212 Direct Examination.

By Mr. Dailey:

Q. Do you know where Melva, M-e-l-v-a (spelling), Poland is?

A. Yes, not far from that town that I came from.

Q How close is it to this town, I will have to spell it to you, I can't pronounce it, you know.

A. You mean that Roszyny?

Q. Yes, sir.

A. Yes, that is about four or five miles, that is close to the German border.

Mr. Hood:

I can't understand you.

(By Mr. Dailey):

Q. About four or five miles from this town?

A. From this town where he was born and where I was born.

Q. It is in Poland?

A. Poland, that is right.

Mr. Dailey:

That is all.

Cross Examination.

By Mr. Hood:

Q. Where were you born?

A. I was born in the same town, Roszyny, that Fogel was.

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Q. What is the name of it?
A. Roszyny.
Q. You weren't born at Melva?
A. No, not Melva.
Q. Did you say you were born in the same town he was born in?
A. Yes.
Q. He was not born in Melva?
A. I don't know that he was born there, I don't know where he was born, I don't remember that.

Mr. Dailey:
Now, if your Honor please, subject to the introduction of our instruments from Washington, we are waiting on, we are through now.

Mr. Cantrell:
If Your Honor please, the only thing we have remaining is this Mr. Segall whom we would like to put on to show the connection of this defendant with those insurance policies, and he is not available at the moment, but we can have him available tomorrow, or whenever it suits Your Honor's convenience.

The Court:
The Court has indicated Friday, so, we will postpone further hearing until ten o'clock Friday morning, of this week.

(Whereupon, an adjournment was taken to November 14, 10:00 a. m., whereupon the following proceedings were had:)

Mr. Hood:
The Government would like to conclude its phase of the case, we have one more witness we would like to introduce.

The Court:
Very well.

ISADORE SEGALL, a witness produced on behalf of the Government, being first duly sworn, testified as follows:

214 Direct Examination.

By Mr. Hood:

Mr. Dailey:
We will stipulate with you he signed this application.

Mr. Hood:
We want to put Mr. Segall on, since it was denied.

(By Mr. Hood):
Q. State your name to the Court, please.
A. Isadore Segall.
Q. Mr. Segall, what is your business, please, sir?
A. Life insurance underwriting.
Q. With what company?
A. Southland Life Insurance Company.
Q. Are you acquainted with the defendant in this case, Sam Hannah Fogel?
A. Yes, sir.
Q. How long have you known him?
A. Oh, some ten to fifteen years.
Q. Did you state how long you had been with the Southland?
A. Twenty, twenty years.
Q. During that time you have been with the Southland Life Insurance Company, have you had occasion to take the application of this defendant for life insurance, or other insurance, with your company?

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A. Yes, sir.

Q. I hand you what has been marked or designated as Government's Exhibit 11, which purports to be an application signed by this defendant, dated the 15th of June, 1934, witnessed by you, and ask you to state whether or not the defendant signed that?

A. Yes, sir.

Q. In that he stated he was born July 10, 1898, is that correct?

A. That is right.

Q. I hand you Government's Exhibit No. 21, which purports to be an application of insurance with your company, signed by the defendant on the 12th of March, 1935. Did the defendant sign that?

A. Yes, sir.

Q. In your presence?

A. Yes, sir.

Q. And he stated he was born July 10, 1898?

A. That is right.

Q. Is that correct?

A. Yes, sir.

Q. I hand you Government's Exhibit No. 20, which is an application for insurance with your company, signed on the 31st of January, 1935, by Samuel Hannah Fogel, stating that he was born July 10, 1898, and ask you to state whether or not the defendant signed that?

A. Yes, sir.

Q. And he stated he was born on July 10, 1898?

A. Yes.

Q. I hand you Government's Exhibit 13, which is an application for insurance with your company, dated July 12, 1934, signed by Sam H. Fogel, and in which he stated he was born on the 10th of July, 1898, and ask you to state whether or not the defendant signed that?

A. Yes, sir.

Q. Speak out, please.

A. Yes, sir, pardon me.

Q. All right, I hand you Government's Exhibit No. 14, which is application for insurance, by the defendant, Sam H. Fogel, signed the 14th of August, 1934, in which he stated he was born July 10, 1898. Did the defendant sign that in your presence?

A. Yes, sir.

Q. And he stated he was born July 10, 1898?

A. Yes, sir.

Q. Government's Exhibit 15, purports to be an application for insurance with your company, and purports to be signed by the defendant on the 7th day of September, 1934. Did the defendant sign that?

A. Yes, sir.

Q. In your presence?

A. Yes sir.

Q. And he stated he was born July 10, 1898?

A. Yes, sir.

Q. I hand you Government's Exhibit No. 16, which purports to be an application for insurance with your company, purported to be signed by Sam H. Fogel on the 5 day of October, 1934. Did the defendant sign that in your presence?

A. Yes, sir.

Q. And in that, did he state he was born July 10, 1898?

A. Yes, sir.

Q. I hand you Government's Exhibit 17, which is dated the fifth day of October. I believe, is that right?

A. That is right.

Q. 1934, in which the defendant is—it is purported to be signed by the defendant, Sam Hannah Fogel, in which he stated he was born July 10, 1898?

A. Yes, sir.

Q. Did the defendant sign that?

A. Yes, sir.

Q. He did. I hand you Government's Exhibit No. 18, which purports to be an application for insurance, signed

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by Sam Hannah Fogel on the fifth day of November, 1934, which states he was born on the 10th day of July, 1898. Did the defendant sign that?

A. Yes, sir.

Q. I hand you Government's Exhibit No. 19, which purports to be an application to your insurance company, purported to be signed by the defendant, Sam Hannah Fogel, on the fifth day of November, 1934, in which he states he was born July 10, 1898. Did the defendant sign that?

A. Yes, sir.

Q. I hand you Government's Exhibit No. 23, which purports to be an application signed by the defendant, to this company, on the 13th of April, 1934, in which he states he was born on the 10th day of July, 1898. Did the defendant sign that in your presence?

A. Yes, sir.

Q. I hand you Government's Exhibit No. 12, which purports to be an application for insurance with your company, and purports to be signed by Sam Hannah Fogel, Sam H., I believe?

A. I beg your pardon?

Q. Signed on the 14th day of May, 1934, in which he states he was born on the 10th day of July, 1898. Did the defendant sign that in your presence?

A. Yes, sir.

Q. Now, you having taken those applications from the defendant, you became familiar with his signature, did you not, Mr. Segall?

A. Yes, sir.

Q. Here is Government's Exhibit No. 1, which purports to be an application signed by Sam—S. H. Fogel, dated the ninth day of March, 1927, which was witnessed by Hilda Levy.

A. Yes, sir.

Q. Did Hilda Levy used to be employed by your concern, or is she now?

A. She used to be, but she is not now.

Q. Do you know her present whereabouts?

A. No, I do not.

Q. Could you say that is the signature of this defendant to that application, Government's Exhibit 1?

A. Well, it looks like the others.

Q. It looks like the others. Now, he stated he was born the 10th day of July, 1898?

A. Yes, sir.

Q. I show you Government's Exhibit No. 7, which purports to be an application signed by S. H. Fogel on the 30th of July, 1927, witnessed by Hilda Levy, in which it states S. H. Fogel was born on the 10th of July, 1898. Would you say that signature of "S. H. Fogel", is the signature of this defendant?

A. It looks like the others.

Q. It looks like the others. Did this defendant, at all times, while he was dealing with you, in connection with these insurance policies, represent to you at all times he was born on July 10, 1898?

A. I only asked that question once with regard to these applications.

Q. But, he told you he was born July 10, 1898?

A. That is right, yes, sir.

Q. And in preparing these other applications, he did sign them?

A. That is right.

Mr. Hood:

I believe that is all.

Cross Examination.

By Mr. Dailey:

Q. Just one minute, please, sir; I believe this would be Defendant's Exhibit No. 4.

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(The instrument referred to was marked Defendant's Exhibit No. 4 for identification.)

(By Mr. Dailey):

Q. I show you what has been designated as the Defendant's Exhibit No. 4, particularly the signature there. You said you were acquainted with his signature. Is that signed by Fogel's signature there?

A. It looks like it, sir.

Q. Well, you said you knew it, and you had it on those applications, would you say that that is, your best judgment is, that is Sam Fogel's signature?

A. Well, the only way I could say that this looked like it, is that it looked like the other signatures.

Q. Looked like the other signatures, and that is the way you testified as to those other applications there, the ones you didn't take?

A. That is right.

Q. You are as sure of this as you are of them, though, the ones you did not take?

A. Yes, sir.

Mr. Dailey:
Okey.

Mr. Hood:
That is all.

The Court:
You may be excused.

Mr. Hood:
I believe that is all the Government has, Your Honor.

Mr. Dailey:
If the Court please, we now offer in evidence a certified copy of the registration of Sam Fogel, where he

registered under the Selective Service Act of World War I, we will offer this in evidence at this time.

Mr. Hood:

Your Honor, we want to object to the introduction of it; first, it has not been established that this defendant is the person who is named in that registration, is one and the same person; second, that it is stated in his motion for a new trial as follows: Paragraph Six, "That since the said trial, the defendant has further learned that he registered under the Selective Service Act of World War I, in Waxahachie, Texas", and the Government's position is this, a man of the intelligence of this defendant's intelligence, of his knack of making money in business, that could not in any way be taken as new evidence; he knew at the time, that was peculiarly within his knowledge, that he had registered, if he did register, for the first World War, and it could not be taken in any way, Your Honor, as newly discovered evidence, because he knew at the time whether he registered, or not, and we object to it on that further ground.

Mr. Dailey:

If Your Honor please, we proved by some five or six witnesses that at the time of World War I, Sam Fogel lived at Waxahachie, Texas, and we think there is no question about that. Now, here is the condition I am in. Mr. M. L. Corenbleth, who represented this man on the trial of this case, will testify, when I can get him, that he told me, he led me to believe he would be here, and would be available, but I was told this morning, now, that he was out of town, and would not be here until Monday, but he will testify that he did not know, and that this was not disclosed to him, that this man had registered in World War I. We have here the certified copy of the manifest from the Immigration Depart-

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ment, and on the trial they testified it wasn't available, there wasn't any such thing in the record.

The Court:
What age did he show on that registration?

Mr. Dailey:
He showed that when he registered for the draft, in World War I, Your Honor, it says, date of birth, unknown, 1894.

Mr. Hood:
Your Honor, we want to call—

Mr. Dailey:
Which would show—

Mr. Hood:
Pardon me, Mr. Dailey, go ahead.

Mr. Dailey:
Yes, which shows he was 23 years old on June 4th, 1917, which would have made him 48 years old at the time he was indicted for having failed to register in 1942, and I would like for Your Honor to see this.

Mr. Hood:
We want to urge this further objection to it, Your Honor, as being immaterial and irrelevant for this reason: that in the indictment, that was in this cause, filed in this cause, charges that on or about a certain date, the 16th day of February, 1942, this defendant, who was bound under the laws of the Selective Service Act, and the regulations issued and promulgated, pursuant thereto, was a person who was required to register, and at the time this case was argued before the Circuit Court of Appeals, Your Honor, I am informed by Mr. Cantrell,

that one of the justices sitting on the Circuit Court, remarked, "I am over the age of 45, I am close to 60, and I had to register for this war," speaking of the second World War. Taking into consideration that this man was born in 1894, the Government's further position is that he still violated the law, as we charge an offense in this indictment, because it is a continuing offense, and we would like now for counsel to show a registration for the second World War; if he can do that, Your Honor, the Government will admit it has no case.

Mr. Dailey:

If the Court please, I have the opinion of the Circuit Court of Appeals, the majority opinion of the Circuit Court of Appeals, it says, on February 16, 1942, that is the date of the indictment, "the Selective Training and Service Act of 1940 was in full force and effect". The footnote down there says that by presidential proclamation February 16, 1942 was fixed as registration day for all persons between 19 and 45 years of age, and that is what he is indicted for, and that is what he was convicted for, and I have the opinion right here, Your Honor.

Mr. Hood:

But, Your Honor, that opinion does not say we are confined to that specific date. That Court held, the gist of that opinion is that the Court held the failure to register was a continuing offense, and it reached in, and got men up to 60 years of age, as I recall, 65.

Mr. Dailey:

That is right, but this man was indicted for failure to register, because he was between the ages of 19 and 45, and no man, Your Honor, can be convicted of anything, until he has been charged with it. This man has not

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been charged with anything, except he failed to register on February 16, 1942, and the Court, in its opinion, says that by presidential proclamation February 16, 1942 was fixed as the registration day for all folks between 19 and 45 years of age.

Mr. Hood:
If the Court please, Mr. Dailey is reading from the foot note, that is not part of the opinion.

Mr. Dailey:
That is part of the opinion.

Mr. Hood:
If the Court please, from the indictment, and I have drawn it myself, I have alleged, in presenting the case to Your Honor, that the defendant was between certain ages, but in this indictment, it was the kind of indictment, we knew this man might falsify anything, we did not allege he was any particular age, we just said he was a male person that was required to register under the Selective Service Act, and the regulations thereto. There might have been some difficulty proving, if we alleged he was a man between certain ages, and not over the age of 45, but the indictment doesn't say that, it charges he failed to register for the second World War.

Mr. Dailey:
Your Honor, on February 16, 1942, it was not a violation of the law for a man, who was over 45 years old, to fail to register, on February 16, 1942.

Mr. Hood:
Of course, Your Honor, we certainly insist on our first ground of our objection, that is, assuming this defendant did register for the first World War, that is not newly discovered evidence, Your Honor.

Mr. Dailey:

It is to me, Your Honor. I was not trying this case, and Mr. Corenbleth will testify, I believe, as he so told me, he knew nothing on earth about this man having registered for service in World War I.

Mr. Hood:

Your Honor, I think the test is, and I think the deciding cases so hold, the test is not what was revealed to counsel, but what the defendant himself knew.

Mr. Dailey:

He did not know.

The Court:

I think we will admit it, the Court will allow it such probative value as he feels it is entitled to.

(Defendant's Exhibit No. 4 is as follows:)

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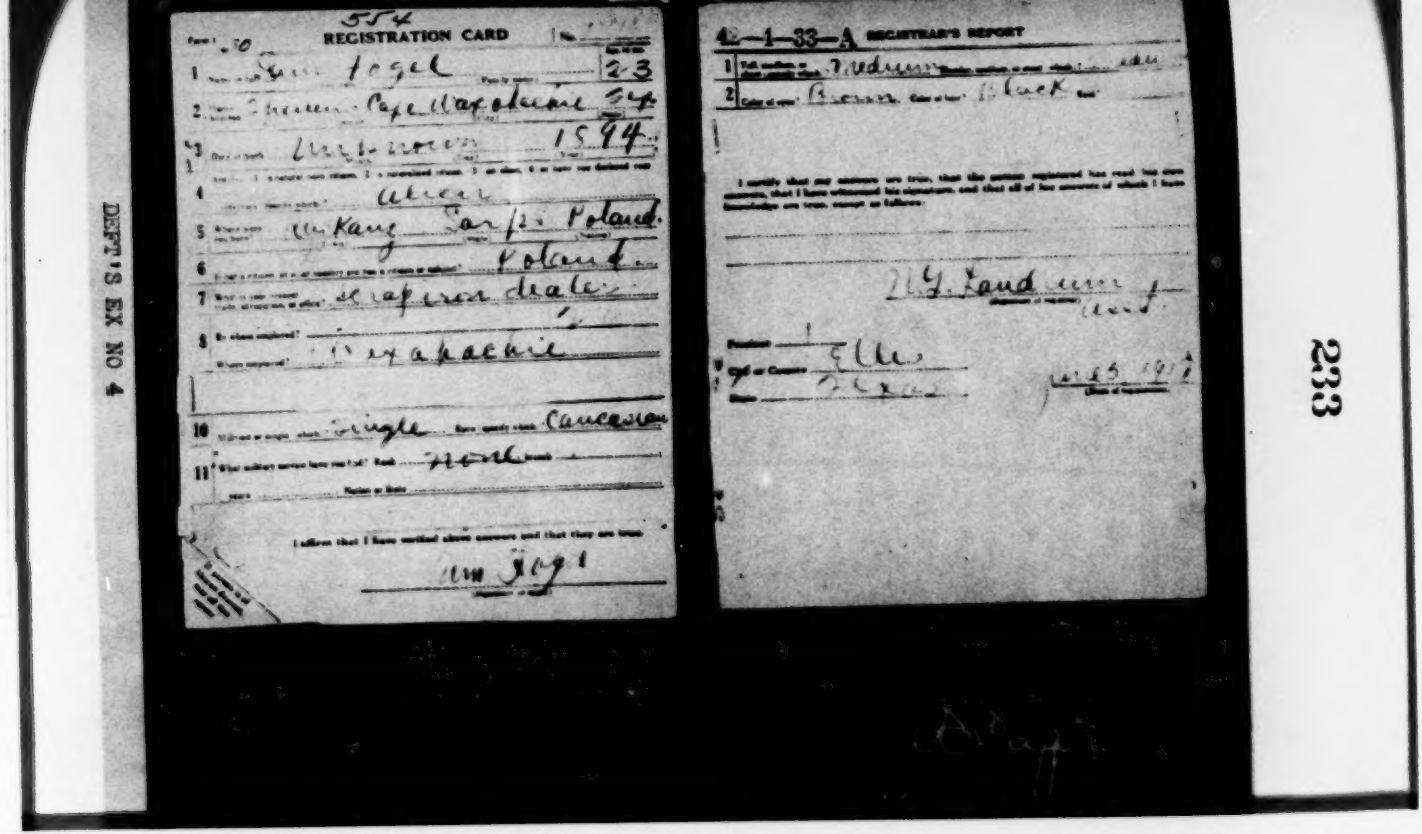
554
REGISTRATION CARD
1 Sam Vogel 23
2 Shenan Page Napoleone 54
3 Mar. 1594
4 Wheat
5 Wankang Sarpi Poland
6 Poland
7 Grapevine dealer
8 Wrapahackie
10 Single Caucasian
11 None
I affirm that I have verified above answers and that they are true.
Sam Vogel
4-1-33-A REGISTRAR'S REPORT
1 Tadeusz
2 Brown Black
I certify that my answers are true, that the person registered has read the above answers, that I have witnessed his signature, and that all of his answers of which I have knowledge are true, except as follows:
M. Y. Landsman
Clerk
Texas
DEFT'S EX NO 4
233
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Mr. Dailey:

Now, Your Honor, I have done everything on earth I could, of course, I did not put Mr. Corenbleth under subpoena, because I was led to believe he would be available here.

The Court:

You can state to me he is a lawyer, and you can state to me what he told you, and I will give that some consideration.

Mr. Dailey:

He will testify, Your Honor, he knew nothing on earth about Sam Fogel having registered for World War I, at the time he tried this case; he would further testify, Your Honor, that he did not know that Sam Fogel entered the United States under the name of Schloime, or whatever it is, I don't know how to pronounce it, Vogel, and that he was unable to have that, because he couldn't get it. And, in the testimony, why, I think that one of the immigration men testified they had been unable to find any place where he had entered. That is perfectly natural, because they were looking for Sam Fogel, you know, and they did not know, of course, that his Polish name, or Jewish name was Schloime Vogel. Now, we think we have definitely established—Your Honor, I hardly ever make this kind of statement, there is no question on earth, in my mind, but what Sam Fogel was over 45 years old on February 16, 1942; there is absolutely no question in my mind about it, Your Honor.

The Court:

I think we will ask counsel to review the evidence briefly on each side.

Testimony Closed.

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230 COURT'S ORAL OPINION.

Dallas, Texas,
November 14, 1947.

The Court:

Realizing that this motion rests in the sound discretion of the Court, we have endeavored to give counsel, both for the defendant, and for the Government, full leeway to place before the Court all information that might be helpful, or of service in the matter.

The defendant, Sam Fogel, seems considerably confused about how old he is. He was born in Russia, or Poland, sometime, it appears, in the Nineties. In registering for World War I, he stated that he did not know his birthday, and then he put 1894. Twenty years ago, in 1927, ten years after he had registered for World War I, he filed an application for insurance, life insurance. In that application, he stated that he was born in 1898. Some four or five years later than the other application, I think, there was probably ten of those applications for insurance, and in that he gave the day of his birth as July 10, 1898, just about the time Admiral Schley was sinking the Spanish Fleet at Santiago.

He came on down later, and he wanted to become a citizen of the United States, and there he swore that his age, and date of birth, at least, was in 1898. Whether it was to his disadvantage, or to his advantage, to make him older or younger, I don't know. But, he harmonized that date with the date in his insurance policies. It was to his interest to make himself young, in taking out life insurance, because each year adds to the amount of the premiums that would be due, to carry the insurance.

Finally, after he was tried in this case, and given the sentence, which is now before the Court, he was again presented in another case for falsifying the truth, in his application for citizenship, which was filed in this Court,

to be presented before Judge Atwell. In that application, he stated that he had not been convicted of crime, and he gave his age, among other things, in that. He made various statements in there that he later admitted to be untrue, and when confronted with the charge of false swearing, or perjury, he entered a plea of guilty.

Concealing one's criminal record, in order to become a citizen of the United States, which is a valuable right, and privilege, and which, in the light of the defendant's record, is one in which the Court would have assessed some prison term, but seeing that the defendant already had a prison term assessed to him, which is the one now before us, we probated the prison term in the later case.

Now, he seeks a new trial, the effect of which would be to relieve him of serving any prison term, in either case.

All of it, however, comes back to the question as to whether or not there is sufficient evidence, showing that there is newly discovered evidence, evidence that he did not know, upon which the Court should grant him a new trial, in the exercise of discretion.

We believe that the defendant is a man of intelligence. He has understanding. He knew he wanted this life insurance. He knew why he wanted it. He knew he wanted to be a citizen. Evidently he knew why he wanted to be. Counsel said he started these fabrications about his age for a purpose. He knew why he wanted that. After a man reaches 50 years of age, although he has no knowledge, actual knowledge of his own date of birth, matters of pedigree and matters of age are notable exceptions to the rule of hearsay, because at a time when there is no disposition to falsify, we are advised about our age.

I remember very well, my fifth birthday. I remember just walking along the road, at a certain place, by a dogwood tree, and I know where we were going, and my father turned and looked at me, and he said, "Whitfield,

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you are five years old today." I remember they were erecting a cotton press at a gin. I remember the whole party of them were stung by the yellow jackets out there. I remember a dozen things that were connected with that event on my fifth birthday, so, I knew when my fifth birthday was, and I remember each birthday from that time on to this one. I don't think I have ever missed one.

Matters of pedigree and matters of age are outstanding exceptions to the hearsay rule. They are so outstanding exceptions, that they rank with the rule itself.

Now, when this man came over here, he was a bright young fellow, twenty years of age. He showed his good judgment by coming right straight to Texas, and he went down here to Waxahachie where they raised good cotton. Waxahachie, at that time, and Ellis County, perhaps, raised as much, if not more cotton, about that time, than any other. He went to buy cotton, and he evidently wanted good cotton, and, he went to give checks. It is manifest, with all of the evidence before him, with all of his recollections before him, with all the contact of his brother, and his letters home he has probably written and received, that he has settled his age as of July 10, 1898, and his name as Fogel, Sam Fogel. That is his adopted name. We do not believe that the evidence, so far as the defendant is concerned, is newly discovered evidence. For that reason, we do not feel that the case should be set aside. But, if we were to concede that it was newly discovered evidence, and that his birth date was back in 1894, instead of 1898, under the law, as pointed out by the District Attorney, it would still have been his duty to have registered, and we believe that he could be put on trial again, if we granted a new trial, under the indictment, as it now exists.

And, that being the case, we see no reason for setting aside the judgment, and granting a new trial.

The motion will be overruled.

Mr. Hood:

Now, is the Court's order, sustaining the order, of the mandate, invoked at this time?

The Court:

Yes.

Mr. Dailey:

Your Honor, may I make this observation, this is a new law, and I would like to have, and I can get it ready by sometime tomorrow, if the Court will reserve judgment there until tomorrow, and let him go, I will try to have my record, and my notice of appeal. I am going to try to appeal from this. It is a new law. As Mr. Hood has stated, I believe that the only way I can reverse this case, if I can, is by showing the Court did not properly exercise his discretion in this case. But, I know of no case that has been appealed under these rules. Do you know? You attorneys, do you know one?

It is new, and naturally, I would like to know what the law is in this case, about whether or not an appeal does lie, from Your Honor's action in overruling the motion for a new trial. Frankly, I don't know. It has not been passed on, but my idea is this, that it is a right, vested by those rules, and enforceable as any other part of the law, but that it has not been tested, and has not been determined. I don't know of a case that has been appealed under these new rules, Your Honor.

Mr. Hood:

Your Honor, we certainly don't object, and we certainly think he has a legal right to file his appeal, but it does not prevent this Court from letting the mandate be executed. We think the mandate should be executed, because the man had his day in Court, and he wants to get on the merry-go-round, and his ticket has been punched, and this is the time—

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The Court:

I believe we will accord such facilities as the Court has, to enable them to take an appeal. I think that appeal will probably be dismissed, when it reaches the Circuit Court, but may we ask counsel why you might not give your notice now, and why you wish delay?

Mr. Dailey:

The simple reason is, Your Honor, that there are certain matters of the record that I would like to bring out. I would like to know more about, in my notice. However, I believe the rule has been changed. But, what I wanted, Your Honor, was to give notice of appeal, and I wanted to ask for bond, appeal bond.

Mr. Hood:

Your Honor, we certainly are going to object to an appeal bond in this case.

The Court:

I believe the statute still prevails, however, I will admit it has not been rigidly applied, but the statute still prevails, and reads in a mandatory way that where an appeal is frivolous, the Court should not allow bond.

Mr. Dailey:

Of course, we don't think it is frivolous, or we would not appeal.

Mr. Hood:

Your Honor, this thing can keep going on and on, and around and around, and can go to the Supreme Court, this time, like it did the last time, and come back, and make another—

Mr. Dailey:

Your Honor, Mr. Hood knows, on five days notice, he can make a motion to dismiss the appeal, because it is frivolous.

Mr. Hood:

We can do that with the man in the penitentiary.

Mr. Dailey:

He can file his motion, and I would like to find out about the law.

Mr. Hood:

Mr. Dailey can find out about the law, but it is our opinion the defendant should go ahead and start serving his sentence; Mr. Dailey can brief the law; Mr. Fogel can't be of any assistance there.

Mr. Dailey:

If the Circuit Court of Appeals failed to agree, the man ought not to be in the penitentiary, anyway. Of course, that is a rule—

Mr. Hood:

The rule of newly discovered evidence provides that at any time in two years he can file a motion, and most of the people in the penitentiaries file these. We say that is this type of case. We say, let him go, and he has a very capable lawyer on the outside working for him.

The Court:

Yes, he has had three lawyers.

Mr. Cantrell:

Very capable.

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The Court:

But, owing to the attitude he has placed the Court in, the Court wants to be careful in his own mind that he has not been influenced in the exercise of this discretion, by reason of the attitude in which the defendant has placed the Court, in talking the Court, as it were, out of imposing a sentence, as it were, in the other case, and then seeking to have the sentence set aside in this case. I think I will let him go ahead, and allow him bond; I will fix the bond at $10,000.00.

Mr. Dailey:

Thank you, sir, and we will file our notice of appeal.

Mr. Hood:

Would Your Honor listen to the Government's counsel on that point?

The Court:

Yes, I will hear you.

Mr. Hood:

Your Honor, we want to stress this. We, of course, admire Your Honor very much, but Your Honor, these new rules provide, this man has had his appeal to the Circuit Court, he has been out on bond; he was convicted after a fair trial, and then he got a writ of certiorari to the Supreme Court. They had this matter before them, and they denied it. The rules provide that any time in two years, he may file a motion for new trial, under newly discovered evidence, and he has that right, and he has come in and this motion has been denied; this Court has not abused its discretion. There is no error in this record. I don't have it before me, but the rules provide if the Court should think he has error, he should not deny—

Mr. Dailey:
It is not that strong.

The Court:
I might say, in addition to what I have said, Judge Foster, while he was senior judge, discovered the strict application of that rule, and on more than one occasion granted bond while the case was on appeal. I believe I will allow the appeal and bond in the sum of $10,000.00.

Mr. Dailey:
I can have my notice of appeal, Your Honor, I believe at two o'clock. May he go? Here is his bondsman, if he will go on this bond until two?

Mr. Hood:
Your Honor, we certainly are going to object to that, we say he should be taken into custody until he puts up some security.

The Court:
Very well.

Mr. Dailey:
Mr. Hood and I don't seem to agree on any angle of this lawsuit, Your Honor.

The Court:
Well, the Court doesn't think you have a lawsuit, but he is willing for you to find out.

Mr. Dailey:
Yes, sir, thank you sir.

The Court:
Do you want to present this matter in open Court?

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Mr. Dailey:

Your Honor, if the Court will tell the Marshal to tell Mr. Madden Hill to accept the $10,000.00 bond, it would not be necessary to burden the Court with that any further.

* * * * * *

We, Counsel for the Government and Counsel for the defendant, agree that the above and foregoing is a true and correct transcript of the proceedings had in a hearing on a motion for a new trial in a cause entitled United States of America vs. Sam Hannah Fogel, No. 11681 Criminal.

December 11th, 1947.

WILLIAM CANTRELL, JR.,
Counsel for the Government.
HOWARD DAILEY,
Counsel for the Defendant.

The above and foregoing transcript of proceedings in Cause No. 11681 Criminal, entitled United States of America vs. Sam Hannah Fogel, having been approved by counsel for the Government and the Defendant, it is hereby approved and ordered filed as a part of the record in this case.

Dallas, Texas, December 11th, 1947.

T. WHITFIELD DAVIDSON,
United States District Judge.

242 JUDGMENT AND COMMITMENT.

Cr. Form No. 25

District Court of the United States for the Northern District of Texas, Dallas Division.

United States of America
vs.
Samuel Hannah Fogel.

No. 11,681, Criminal Indictment in One (1) count for violation of U. S. C. A. Title 50, Section 311.

On this 19th day of February, 1947 came the attorney for the government and the defendant appeared in person and by counsel; and having in open Court waived trial by jury;

It Is Adjudged that the defendant has been convicted upon his plea of not guilty; and a judgment of guilty of the offense of unlawfully, wilfully and feloniously, with intent to evade induction into the land or naval forces of the United States of America, failing and neglecting to register with a Selective Service Draft Board, in violation of the Act of Congress of the United States, commonly cited as the Selective Training and Service Act of 1940, as amended, and the Rules, Orders and Regulations issued and promulgated by virtue of and in pursuance to said Act, as charged and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

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It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of eighteen (18) months, and to pay a fine of One Thousand ($1,000.00) Dollars, and that said defendant be further imprisoned until payment of said fine, or until said defendant is otherwise discharged as provided by law.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

T. WHITFIELD DAVIDSON,
United States District Judge.

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243 PRAECIPE.

(Title Omitted.)

To the Honorable George W. Parker, United States District Clerk for the Northern District of Texas, Dallas Division:

Please prepare a transcript of the record in the above cause, to be transmitted by you to the United States Circuit Court of Appeals, for the Fifth Circuit, and include therein the following:

1. Copy of the original indictment of appellant.

2. Motion for a new trial of appellant.

3. Order of the Court overruling motion for a new trial.

4. Petition for bail.

5. Order of the Court allowing bail.

6. Appeal bond.

7. Notice of appeal.

8. Bill of exceptions and transcript of the proceedings upon the hearing of the motion for a new trial.

9. Verdict and judgment of the Court in the original trial of this cause, and copy of the sentence.

10. In addition ta the above, other matters of record as are pertinent to this appeal, together with your certificate of Clerk to the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, at New Orleans, Louisiana.

HOWARD DAILEY,
Attorney for Appellant,
Samuel Hannah Fogel.
WILLIAM CANTRELL, JR.,
Ass't U. S. Atty., Attorney for Appellee, United States of America.

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244 CLERK'S CERTIFICATE.

I, GEORGE W. PARKER, Clerk of the United States District Court for the Northern District of Texas, do hereby certify that the foregoing is a true and correct transcript of the record and all proceedings in cause No. 11,681, wherein United States of America are plaintiffs and Samuel Hannah Fogel is defendant, as fully as the same now remain on file and of record in my office at Dallas, Texas.

Witness my hand officially and the seal of said Court at Dallas, Texas, this the 16 day of December, A. D. 1947.

GEORGE W. PARKER,
Clerk, U. S. District Court,
Northern District of Texas.

(Seal)

By RAMELLE HAMILTON,
Deputy.

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[fol. 248] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of April 14, 1948

No. 12181

SAMUEL HANNAH FOGEL

versus

UNITED STATES OF AMERICA

On this day this cause was called, and, after argument by Howard Dailey, Esq., for appellant, and William Cantrell, Jr., Esq., Assistant United States Attorney, for appellee, was submitted to the Court.

[fol. 249] OPINION OF THE COURT AND DISSENTING OPINION OF SIBLEY, CIRCUIT JUDGE—Filed May 7th, 1948

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 12181

SAMUEL HANNAH FOGEL, Appellant,

versus

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for the Northern District of Texas

(May 7, 1948)

Before Sibley, McCord, and Lee, Circuit Judges

McCORD, Circuit Judge:

Samuel Hannah Fogel was indicted on January 22, 1947, for having failed to register for the draft on or about February 16, 1942, in violation of the Selective Training and Service Act of 1940, as amended. c. 720, 54 Stat. 885.

[fol. 250] On February 19, 1947, having waived a trial by jury, Fogel was tried by the court, convicted, and sentenced to serve eighteen months in a penitentiary, and to pay a fine of $1,000.00. From his judgment of conviction and sentence thereon appellant duly appealed to this court, and on June 12, 1947, the judgment of the district court was here affirmed. *Fogel v. U. S.*, 162 F. 2d 54.

On August 21, 1947, appellant petitioned the Supreme Court of the United States for writ of certiorari to review the affirmance of his conviction. Certiorari was denied on October 20, 1947. *Fogel v. U. S.*, 332 U. S. 791.

Thereafter, on November 3, 1947, and prior to his commitment under the mandate, appellant filed a motion for a new trial on the ground of newly discovered evidence, as permitted and allowed under Rule 33, Rules of Criminal Procedure of the District Courts of the United States. Hearing on the motion was had before the district court on November 12, 1947; two days later, after evidence and argument of counsel thereon, the motion was denied. Appellant thereupon filed this appeal, alleging the district court abused its discretion in overruling his motion for a new trial.

At the hearing appellant introduced, as newly discovered evidence, various exhibits, affidavits, and the testimony of several witnesses, all purporting to establish that on the date he was charged with the offense of failing to register for selective service, appellant was over the maximum registration age of 45 years, and was therefore not guilty of the crime as charged in the indictment. In support of [fol. 251] his contention, appellant offers a certified copy of the entry of one Schloime Vogel into the United States, on June 30, 1913. This emigrant was then listed as 20 years of age, having come to this country to join his brother, one Josef Vogel, then residing in Philadelphia, Pennsylvania. A certified copy of one Sam Hannah Fogel's registration for the draft during World War I was also introduced, on which Fogel's age, as of June 5, 1917, was listed as 23 years. Two affidavits of Philadelphia residents further purport to establish that Schloime Vogel and appellant are one and the same person.

Appellant contends that these affidavits and exhibits, together with the testimony of several witnesses introduced to substantiate the information listed thereon, prove that he, Samuel Hannah Fogel, is one and the same person

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as the emigrant, Schloime Vogel, who entered the United States in 1913 when he was 20 years of age, and registered for the draft during World War I when he was 23 years of age; that this newly discovered evidence shows that he was at least 48 years old on February 16, 1942, which date was set for the registration of only those males between the ages of 19 and 45; that he was therefore not required by law to register on that date, and is not guilty of the crime charged.

The Government's testimony sharply contradicts that of appellant, as to whether he is actually the same person as Schloime Vogel. The evidence reveals a wide discrepancy in physical discriptions between the emigrant, Schloime Vogel, and the appellant, Samuel Hannah Fogel. The description of the former, as listed in the certified [fol. 252] copy of his record of entry into the United States, listed that emigrant as being 5 feet, 5 inches in height, possessing a fair complexion, light brown hair, gray eyes, with birthplace in Rozyny, Russia; whereas the appellant, according to practically undisputed testimony, has been since the first World War a man 5 feet 8 inches in height, with brown eyes, black hair turning gray, dark complexion, with place of birth in Racianz, Poland, or Melva, Russia. It was further shown that appellant's representations of his age, as purportedly revealed by these exhibits, was inconsistent with many other statements concerning his age, some of which were under oath, made by him to various government officials, to a number of life insurance companies when filling out applications for insurance over a period of years, on all of which he stated he was born in 1898, and even to a deputy United States Marshal at the time of his arrest. Before his case arose, with the possible exceptions of the emigration certificate and his registration for World War I, appellant seems consistently to have maintained his year of birth was 1898. Now and since the time of his trial he maintains he was born in 1894.

It is without dispute that appellant not only failed to register for Selective Service on February 16, 1942, the date set by Presidential Proclamation for the registration of all males between the ages of 19 and 45, but that he further failed to register on and after April 27, 1942, the date set by a second Presidential Proclamation for the registration of all males between the ages of 19 and 65. There is no dispute that appellant is under 65 years of age.

[fol. 253] We are of opinion the trial court properly exercised its discretion in overruling appellant's motion for a new trial. It is well settled that the action of a trial court in this regard is not subject to review unless it be clearly shown that the court abused its discretion, or failed to exercise it. *Prisament v. United States*, 96 F. 2d 865; *Luke v. United States*, 84 F. 2d 711, 712; *Nichols v. Republic Iron and Steel Company*, 89 F. 2d 927, 928.

The record clearly shows that the evidence here presented is not newly discovered. *Gwinn v. United States*, 294 F. 878, 880; *Payton v. Ideal Jewelry Mfg. Co.*, 7 F. 2d 113, 114; *Coleman v. State*, 300 S. W. 59, 60; *Emanuel v. State*, 16 S. W. 2d 1083, 1084. The rule has long been established that evidence obtained after tial, in order to be newly discovered in a legal sense, must have been unknown and unavailable to the defendant himself at the time of his trial. Appellant here has wholly failed to discharge his burden of proving that the additional evidence he now seeks to introduce is, in fact, newly discovered, and that the failure to produce same at the time of trial was not due to any lack of diligence on his part. *Prisament v. United States*, 96 F. 2d 865, 866; *Weiss v. United States*, 122 F. 2d 675, 691, 692.

If it be conceded that appellant and Schloime Vogel are one and the same person, which we in no wise do, the conclusion is still inescapable that he knew this at the time he was indicted and tried. Such information, if true, was by its very nature peculiarly within his knowledge, and therefore could not be newly discovered as far as he was concerned. At the time of his trial appellant knew, or should [fol. 254] have known, the approximate date of his arrival in this country, the name under which he was registered, the place from which he sailed, the port at which he landed, the name of the ship on which he sailed, the country and place of his birth, and all other information now offered as newly discovered evidence. Yet throughout his trial and the hearing on his motion for a new trial appellant claimed his constitutional right, and declined to offer any testimony whatever in this regard. Moreover, it appears that no order for a continuance was ever sought from the court, on the ground that the evidence now sought to be introduced was not available to appellant at the time of trial. Absolutely no facts whatever are alleged from which we may reasonably infer diligence on the part of appellant, although he

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was and is represented by able counsel. It further appears that although appellant waived his right to a jury trial, he now urges that he is entitled to a reversal in order that a jury may now pass upon the alleged newly discovered evidence, all of which was peculiarly within his personal knowledge at the time of his trial.

When we come to consider the evidence fully and fairly, as we have attempted to do, we find that the trial court in no wise abused its discretion in overruling appellant's motion for a new trial, but exercised a patience and forbearance in hearing and weighing the evidence and argument thereon which bespeaks his earnest desire to ascertain the true facts. The defendant has never been imprisoned but has at all times been permitted to make bond and carry on his business since the return of the indictment. To grant a new trial to this defendant on the evidence as [fol. 255] disclosed by this record, is an invitation to make a mockery of justice.

We find no reversible error in the record and the judgment is therefore

Affirmed.

SIBLEY, Circuit Judge, again dissenting:

This case suffers from the predilections of all its judges. The district judge convicted Fogel and sentenced him to the penitentiary; he is for upholding his previous decisions. In this court the same judges are sitting who heard the former appeal, and the same two again affirm the conviction. I am more convinced than ever, not that "to grant a new trial is to invite a mockery of justice," but that justice is mocked by not granting one.

The indictment, filed January 22, 1947, charges a failure to register "on or about the sixteenth day of February, 1942." That is the date on which by Presidential proclamation persons between 18 and 45 years of age were required to register. Fogle was tried for failing to register on that date, being under 45. The whole controversy in the trial was whether he was under 45, or over 45. The judge in finding him guilty said: "In this case, as to the matter of age, the defendant on oath fixes his age (in applying for citizenship) as of July 10, 1898. In the light of the record we are of opinion that this should be accepted as

true. . . . We think that it correctly fixes the age of defendant." He thereupon found him guilty. In overrul-[fol. 256] ing the present motion for new trial for newly discovered evidence, the final conclusion in his opinion is: "But if we were to concede that it was newly discovered evidence and that his birth date was back in 1894 instead of 1898, under the law as pointed out by the district attorney it would have been his duty to have registered (meaning on April 27, 1942, when by a second proclamation all under 65 were required to register) and we believe he could be put on trial again, if we granted a new trial, under the indictment as it now exists. And that being the case, we see no reason for setting aside the judgment and granting a new trial." The present majority opinion also relies on the fact that Fogel, being under 65, did not register on April 27, 1942. But he was not indicted nor tried for failing to register on that date or on that basis, and on review by the district judge, and in this court, the charge cannot be thus shifted to sustain the conviction. That process was held not to be due process in the recent case of *Roy Cole and Lewis Jones vs. Arkansas,* — U. S. —, decided March 8, 1948.

The other reasons given by the district judge equally show an abuse of discretion. He dwells on Fogel's confusion about his age, in that while in 1917 he registered (as now for the first time appears) for World War I he put his birth year as 1894, yet twenty years later in applying for insurance policies he made it July 10, 1898, and finally in 1946 in applying for citizenship he put the same date, and since his trial in this case he plead guilty to false swearing in connection with that application and was put on probation in view of this prison sentence. "Now he seeks a new trial the effect of which would be to relieve [fol. 257] him of serving any prison term in either case." Fogel's confusion about his age, and his misstatements about it merely go to show that his "admissions" on which he was convicted are quite unreliable, and insufficient to sustain the Government's burden of showing he was less than 45 years old beyond a reasonable doubt. The Government has no other evidence at all about his age. And to refuse a new trial in order the more certainly to keep the defendant in the penitentiary on some charge is surely on its face a gross abuse of discretion.

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As to the immigration record, the judge said: "Now when this man came over here he was a bright young fellow twenty years of age. He showed good judgment in coming right straight to Texas." This shows that the judge was convinced that the immigration record which fixed the age as then 20, and not 16, referred to Fogel, as the older brother, Josef Fogel, and two witnesses from Philadelphia who saw the immigrant on his arrival swear. The name in the record is Schloime Vogel. The testimony is, and it is generally known, that Vogel is a German name pronounced the same as English Fogel; they are the same name, completely *idem sonans*. Schloime is Yiddish, the accent is on the *i*, pronounced as English *ee*, and the final *e* is pronounced as a syllable. The English pronounciation is "Schlema," as the stenographer phonetically spelled it in his report of Josef's testimony in the original trial, when he said the defendant came to him in Philadelphia under that name in June, 1913, aged 20 years. There is a discrepancy in height, which was probably guessed at, and in hair and eye color [fol. 258] perhaps seen by the inspector in a bad light. If it does not refer to this immigrant, as three unimpeached witnesses testify, to whom does it refer? It exactly supports in name, date of arrival, and age what Josef testified in the trial before he had seen the record, as does the registration record for World War I of Sam Fogel, which gives in 1917 the age as 24. In my former dissent I thought Josef's unimpeached testimony ought to have prevailed. Thus supported I think it would prevail before an impartial jury.

As to the record evidence being newly discovered, of course Josef and Sam knew that Sam came to Philadelphia in 1913, and there ought to be a record of his entry. The Bureau of Immigration and Naturalization was asked for it and reported that none could be found. It has since been found. How can the Government, which had the record all the while and said it did not exist, assert a want of diligence in producing it? It became available to Fogel only since the trial, and is newly discovered within the law of new trials. It strongly supports the testimony of Josef, the only living witness who knows the fact of Sam's age, and would likely produce a different result on another trial. Sam may deserve to be in the penitentiary, but he ought to be sent there according to law, if at all. I repeat my dissent.

[fol. 259] JUDGMENT

Extract from the Minutes of May 7th, 1948

No. 12181

SAMUEL HANNAH FOGEL

versus

UNITED STATES OF AMERICA

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

"Sibley, Circuit Judge, again dissents."

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[fols. 260-267] PETITION FOR REHEARING—Filed May 21, 1948

No. 12,181

IN THE

United States Circuit Court of Appeals

FOR THE FIFTH CIRCUIT

SAM HANNA FOGEL, *Appellant*

vs.

UNITED STATES OF AMERICA, *Appellee*

PETITION FOR REHEARING

To Said Honorable Court:

Now comes Sam Hanna Fogel, hereinafter called petitioner, and petitioning for rehearing herein, moves the Court for reversal of its majority opinion handed down on May 7th, 1948, and to remand same to the District Court of the United States for the Northern District of Texas, Dallas Division, for new trial, for the following reasons:

2

1

Petitioner earnestly urges that the majority opinion herein was in error when it held that the evidence offered on his motion for a new trial was not newly discovered.

2

Petitioner earnestly urges that the majority opinion of this Honorable Court was in error when it held petitioner was negligent in not having this testimony at the trial of this case on its merits.

3

Petitioner earnestly urges that the majority opinion of this Honorable Court was in error when it took into consideration that petitioner could have been tried and convicted if he were under sixty-five years of age.

4

This Honorable Court erred in taking into consideration that petitioner was not one and the same person as Schloime Vogel.

5

This Honorable Court erred in holding in its majority opinion that the Trial Court did not abuse its discretion

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in overruling petitioner's motion for new trial, for the reason that the Trial Court took into consideration the matters and committed the errors set out in assignment of errors 1, 2, 3, and 4 above set out, and was moved and influenced thereby in overruling his motion for new trial.

6

Petitioner does not abandon, but reurges each assignment of errors brought up by his original brief herein.

STATEMENT OF THE CASE

This cause has been so recently before this Honorable Court and is so fresh in its memory, petitioner feels that it would be a useless burden to encumber the record by restating it, but, instead, adopts the statement made in his original brief, page 1.

BRIEF OF THE ARGUMENT

1. That the evidence adduced at the hearing on his motion for new trial, brought under Rule 33, Rules of Criminal Procedure for the District Courts of the United States, was newly discovered is, in the mind of petitioner, unquestionable. In the trial of this cause on its merits, Mr. Glenn Torrence, a government witness, an examiner for the United States Department of Immigration and Naturalization, testified when asked of the record of

petitioner's entry, "I found there is no record extant of his entry into the United States." And when asked Q. "It is your testimony there is no such record?", he further testified "That is the information furnished us by his claimed port of entry, I think it is Philadelphia, they have no record there of his entry into the United States." (Tr. 77) Could an ignorant Polish Immigrant be in a better position to know these things than the Government experts? Could an ignorant Polish immigrant know that his name was listed as Schloime Vogel instead of Sam Fogel, which are the same?

The only way counsel for appellant knows to try a case is to presume that his counsel knows everything about the case the defendant knows. It is certainly presumed that he tells his client all he knows. The Trial Court allowed present counsel to stipulate what counsel who represented petitioner at the trial on its merits would testify if present at the hearing on the motion for a new trial, and he would have testified that he knew nothing of the record of the port of entry, and did not know of petitioner's having registered for Selective Service in World War One. (Tr. 235). (Present counsel had to go to Washington after it, and only succeeded in doing so after much search, delay, time, and assistance from the Attorney General).

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2

How could counsel for appellant have known about the record of the port of entry when government experts had told him there was none? The Government witness, Mr. Torrence, testified he made an effort to find out if Fogel's entry into the United States was lawful, but was unable to do so for the reason there was no record of his entry. (Tr. 76-77)

3

Appellant was indicted for having failed to register for the draft on February 16th, 1942. The only law in effect then was that those between the ages of 19 and 45 register. He was tried for committing this offense. All the testimony offered by the government was an attempt to prove him under 45. He was so indicted. To convict him for any other offense is violative of the Fifth Amendment to the Constitution of the United States, and directly contrary to and in conflict with the recent case of Cole, et al, vs. Arkansas, 92 L. Ed., 429.

4

Miracles have happened, but hardly one so remarkable as for another man named Joe Vogle or Fogel, living at the same address in Philadelphia would send to the same town in Poland for a brother named Sam Fogel or Schloime Vogel who had the same father and mother and the same

6

number of brothers and sisters with same names as is the case here, if Sam and Schloime are not one and the same person. That they are one and the same person is unquestionably proven, not only by these recorded facts, but by the testimony of Joe Fogel (Tr. 63-65) and Nathan Selcovits (Tr. 46-48).

5

If the Trial Court found that petitioner was over 45 years of age, as he did in this case, at the time he was indicted, (Tr. 237), it was his duty, in the interest of justice, to grant a new trial. If he took into consideration that if he were more than 45 but under 65 he could be tried and convicted under the same indictment, as he did in this case, (Tr. 237), then such action was violative of the Fifth Amendment to the Constitution of the United States, and the decision of the Supreme Court of the United States as set out in Cole, et al, vs. Arkansas, supra. If he so acted under such misapprehension of the law, it was an abuse of discretion as announced in United States vs. Vacuum Oil Co., 310 United States, 247, 84 L. Ed. 1181.

If the Trial Court attempted to weigh the testimony offered by the petitioner at the hearing on his motion for new trial, against that offered by the government, he usurped the functions of a jury and such action was an abuse of discretion, Cleary vs. U.S., 163 F. (2), 748.

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To allow a man to go to the penitentiary for an offense of which he is not guilty, counsel earnestly urges, is an abuse of discretion of any court or power who has the right to correct or prevent it. Whether or not the evidence adduced at the trial had upon his motion for a new trial was newly discovered, which we earnestly contend it was such, if it produced a reasonable doubt as to his guilt under the indictment brought, it would be an abuse of discretion of the court not to grant the motion and give a new trial. If such evidence so created in the mind of the Trial Court a reasonable doubt as to the petitioner's guilt, which it did even more than a reasonable doubt, (Tr. 237), it was an abuse of discretion not to grant the motion, even if petitioner was guilty of negligence in not having had such testimony at the trial of the case on its merits. Of course, petitioner does not admit that there was any such negligence.

This Honorable Court has brushed aside more technicalities in the interest of justice, than has any of the Circuits, and to affirm this case on something that counsel failed to do, certainly is a departure from its accustomed actions. If, as we certainly think we have, proved on the motion for a new trial, under the circumstances presented, that Fogel was more than 45 years of age on February 16th, 1942, it is the plain duty of this Honorable Court

to set aside its action in affirming this cause and to reverse same for a new trial, for which we earnestly pray.

HOWARD DAILEY,
Counsel for Petitioner.
522 Republic Bank Building,
Dallas, Texas.

I, Howard Dailey, Counsel for Petitioner, certify that I believe there is presented a meritorious cause here, and, further, that I have served Counsel for Appellee with two copies of this petition.

Counsel for Appellant.

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[fol. 268] ORDER DENYING REHEARING

Extract from the Minutes of May 28th, 1948

No. 12181

SAMUEL HANNAH FOGEL

versus

UNITED STATES OF AMERICA

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

"Sibley, Circuit Judge, dissents."

[fol. 269] Clerk's Certificate to foregoing transcript omitted in printing.

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Office - Supreme Court, U. S.
FILED
JUN 24 1948
CHARLES ELMORE CROPLEY
CLERK

No. 116

IN THE

Supreme Court of the United States

SAM HANNA FOGEL, *Petitioner*

vs.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR CERTIORARI AND SUPPORTING BRIEF

MAURY HUGHES,
Republic Bank Building,
Dallas, Texas;

HOWARD DAILEY,
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Dallas, Texas;
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E. Duncan & Co., Brief Printers, Dallas

INDEX

	Page
Petition for Certiorari	1 -14
Statement of the Case	2 - 6
Statement as to Jurisdiction	7
Questions Presented	7
Assignments of Errors	7 - 8
Reason Relied On for Allowance of Writ	9 -13
Conclusion	13-14
Supporting Brief	15-35

LIST OF AUTHORITIES

	Page
Cleary vs. U. S., 163 F. (2d) 748	9, 27
Cole vs. Arkansas, 92 L. Ed. 429	9, 17, 27
De Jonge vs. Oregon, 299 U. S. 353, 81 L. Ed. 278	34
Fogel vs. U. S., 167 F. (2d) 54	27
Frank vs. Mangum, 237 U. S. 309, 59 L. Ed. 969	34
Judicial Code, Sec. 240(a), 28 U. S. C. A Sec. 240(a)	15
Langreen vs. U. S., 282 U. S. 530, 75 L. Ed. 520	27
Mattox vs. U. S., 146 U. S. 140	27
Mooney vs. Monohan, 294 U. S. 103, 79 L. Ed. 791	34
Oliver vs. U. S., 68 S. Ct.——	34
Presidential Proclamation No. 2535 (50 U.S.C.A. App. 302)	13, 28
Presidential Proclamation No. 2451	13, 29
Rules of Criminal Procedure, Rule 33	3
U. S. vs. Socony Vacuum Oil Co., 310 U. S. 247 84 L. Ed. 1181	8, 27
Weiss vs. U. S., 122 F. (2d) 691	8

No.———

IN THE

Supreme Court of the United States

SAM HANNA FOGEL, *Petitioner*

vs.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable, The Supreme Court of the United States:

Now comes Sam Hanna Fogel, hereinafter styled petitioner, and applying for writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit, respectfully shows:

STATEMENT OF THE CASE

On January 22nd, 1947, an indictment was returned to the District Court of the United States for the Northern District of Texas, Dallas Division, charging petitioner with having on or about February 16th, 1942, unlawfully, willfully, and feloniously, with intent to evade induction into the land or naval forces of the United States of America, fail and neglect to register with a Selective Service Draft Board, which said act and failure to act on the part of said defendant, as aforesaid, were in violation of the Act of Congress of the said United States, approved September 16, 1940, as amended, commonly cited as the Selective Training and Service Act of 1940, as amended, and the Rules, Orders and Regulations issued and promulgated by virtue of and in pursuance thereto, *and the petitioner being then and there such a person who was bounden under the provisions and requirements of said Act, Rules, Orders and Regulations to so register* as is required by the provisions of the said Act and the said Rules, Orders and regulations. (Tr. p. 1.)

Without the services of a jury, the cause was tried before the Court, and petitioner was on February 19th, 1947, convicted and sentenced to serve eighteen months in a United States Prison to be designated by the Attorney General, and to pay a fine of $1,000.00. From said judgment and sentence, petitioner seasonably appealed to the United

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States Circuit Court of Appeals for the Fifth Circuit, and on June 12, 1947, that court, in a divided opinion, affirmed the judgment and sentence of the Court below. (Fogel vs. United States, 162 F. (2) 54.)

In due course, petitioner applied to this Honorable Court for Writ of certiorari which was denied on the 20th day of October, 1947.

Prior to the service of commitment under the mandate of said Circuit Court of Appeals for the Fifth Circuit, petitioner filed in the District Court of the United States for the Northern District of Texas motion for new trial under Rule 33 of Federal Rules of Criminal Procedure for the District Courts of the United States, and prayed for stay of commitment pending hearing upon said motion. (Tr. pp. 2-5.) The Trial Court granted stay of commitment, heard the motion and testimony presented by petitioner in support thereof, and on November 14th, 1947, overruled same. (Tr. pp. 8-9.)

From said order overruling his motion for new trial, petitioner seasonably appealed to the United States Circuit Court of Appeals for the Fifth Circuit, which said Circuit Court, again, *in a divided opinion*, affirmed the actions of the Court below, May 7, 1948. (Tr. pp. 249-258.) Petitioner filed his petition for rehearing May 21, 1948 (Tr. pp. 260-267), which again, *by a divided Court*, was overruled on May 28th, 1948, without written opinion. (Tr.

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p. 268.) The Circuit Court of Appeals issued its order June 7th, 1948, staying mandate for 30 days from May 28th, 1948, pending this petition for certiorari.

That this Honorable Court may be able to ascertain whether the evidence offered in his motion for new trial under Rule 33 of Federal Rules of Criminal Procedure for the District Courts of the United States is in fact newly discovered within the meaning of that rule, petitioner introduced into the record a transcript of all testimony offered at his original trial of his cause on its merits, which is here brought forward. (Tr. pp. 69-110.)

Evidence introduced at the trial on its merits was to the effect that petitioner was a Polish immigrant, or a Polish Jew, who emigrated to America in 1913, after his brother, Josef, had preceded him here. (Tr. p. 99.) They kept no birth certificates or record of births in the town or province from which petitioner came. He was confused about his age, and did not know exactly how old he was. (Tr. p. 81.) The Trial Court actually found, in its oral opinion, that petitioner was confused about how old he was. (Tr. p. 235.) The Government offered in evidence testimony of Glenn A. Torrence, naturalization examiner with the United States Immigration and Naturalization Service, that petitioner had stated to him, under oath, in connection with his registration as an alien and later in his application for naturalization as a citizen, that he was born July 10th, 1898. (Tr. pp. 72-74.)

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Mr. Glenn A. Torrence further testified that "*I found there is no record extant of his (petitioner's) entry into the United States.*" Further, in answer to the question "It is your testimony there is no such record?", Mr. Torrence answered: "*That is the information furnished us by his claimed port of entry — I think it is Philadelphia — they have no record there of his entry into the United States.*" (Tr. pp. 76-77.)

At the hearing upon his motion for new trial petitioner produced and introduced into evidence certified copy of the record of the entry of one Schloime Vogel (Tr. p. 31), showing his age to have been twenty on June 30th, 1913. This subject had the same father, mother, and brother as has petitioner. He was going to the home of Josef Vogel, 1613 South Orkney Street, Philadelphia, Pennsylvania, the home of petitioner's brother. Sam Hanna Fogel and Schloime Vogel are one and the same person. (Tr. p. 46), and (Tr. pp. 63-65.) Schloime Vogel is Yiddish for Sam Fogel. (Tr. pp. 46-49 and 63-65.)

Petitioner further produced and introduced into evidence at his hearing upon his motion for new trial, certified copy of his registration certificate for selective service for World War I (Tr. p. 223), showing his birth date as 1894, and that he was 23 years of age June 5th, 1917. Neither counsel here appearing represented petitioner at his original trial, but he was represented by Honorable

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Emil Corenbleth and others. (Tr. p. 70.) At the hearing upon his motion for new trial the Trial Court allowed petitioner's counsel to stipulate what the testimony of Mr. Corenbleth would be with reference to whether he knew of the certificate of entry of petitioner or the fact that there was in existance his registration certificate for selective service for World War I at the time of petitioner's original trial. (Tr. p. 234.) That testimony was that they knew nothing of the existence of either the record of petitioner's entry into the United States as was found in the Department of Immigration and Naturalization at Philadelphia, nor of the existence of the registration certificate of petitioner for selective service for World War I. (Tr. p. 234.)

Nowhere in the testimony had at his original trial is there any mention or intimation that petitioner had registered for selective service during World War I, and the Government offered positive proof that there was no record of his entry into the United States. (Tr. p. 76.) It was found and produced at the hearing upon his motion for new trial. (Tr. p. 31.) But the trial court said it was not newly discovered evidence (Tr. p. 237), and the Circuit Court of Appeals affirmed the trial court. (Tr. pp. 249-255.)

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STATEMENT AS TO JURISDICTION

Jurisdiction is invoked under Section 240 (a) of the Judicial Code, as amended (28 U.S.C.A., Section 347-a). The opinion of the Circuit Court of Appeals for the Fifth Circiut was filed on May 7th, 1948. Petition for rehearing was filed in the said Circuit Court of Appeals on May 21st, 1948, and overruled on May 28th, 1948.

QUESTIONS PRESENTED

The only question presented in this petition, as petitioner views it, is whether the trial court abused its discretion in overruling his motion for new trial, based on newly discovered evidence, as permitted and allowed under and by Rule 33 of Federal Rules of Criminal Procedure for the District Courts of the United States. He assigned in the United States Circuit Court of Appeals for the Fifth Circuit, the following Assignment of Errors, which he here now urges, and says the United States Circuit Court of Appeals erred, in its majority opinion and judgment, in failing and refusing to sustain them:

ASSIGNMENTS OF ERRORS

The (trial) court abused its discretion in overruling appellant's (petitioner's) motion for a new trial, because:

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1

He "erroneously excluded from consideration matters which were appropriate to a decision on the motion." (United States vs. Socony Vacuum Oil Co., 310 U. S., 247, 84 L. Ed., 1181.)

2

The newly discovered evidence introduced at the hearing upon petitioner's motion for a new trial "is so material that it would probably produce a different result" at another trial. (Weiss vs. United States, 122 F. (2) 691, 5th Cir.)

3

The trial court failed to exercise its discretion and grant a motion for new trial as a result of its misapprehension of what the law governing the case is. (Tr. p. 235.)

4

The trial court assumed the function of a jury in passing upon the weight of the testimony offered at the hearing upon petitioner's motion for a new trial as against other evidence tending to show the guilt of petitioner.

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REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT:

1

The majority opinion of the United States Circuit Court of Appeals for the Fifth Circuit in this case (Tr. pp. 249-255), is in direct conflict with the opinion of this Court in *Cole vs. Arkansas*, 92 L. Ed., 429. (Advance Sheet No. 11, decided March 8th, 1948.)

2

That opinion is in direct contravention of the Fifth Amendment to the Constitution of the United States.

3

That opinion is in direct conflict with the opinion of another Circuit as decided in *Cleary vs. United States*, 163 F. (2), 748.

4

In holding that a man may be indicted and tried for having failed to register for selective service on a date fixed at which men between the ages of 19 and 45 should register, but could be convicted under the same indictment if he were over 45, but under 65, the Circuit Court of

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Appeals in this case has so far departed from the accepted and usual course of judicial proceedings, and has so far sanctioned such a departure by a lower court as to call for an exercise of this Court's power of supervision.

5

In sustaining the trial court's opinion in this case that a man might be indicted for having failed to register on February 16th, 1942, for selective training and service, which date was fixed for those between 19 and 45 to register, he, nevertheless, could be convicted if the proof showed he was over 45 years of age if it be further proven that he was under 65, the United States Circuit Court of Appeals decided an important federal question, which has not been, but should be, passed upon by this Court.

No. 1

Petitioner introduced at the hearing upon his motion for new trial certified copy of the record of his entry into the United States, which showed he was 20 years of age June 30th, 1913. (Tr. p. 31.) He introduced certified copy of his registration certificate where he registered for selective service for World War I, showing he was 23 years old June 5th, 1917. (Tr. p. 233.) These two exhibits clearly showed that he was at least 48 years of age February 16th, 1942. The Government proved at the trial of this

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case on its merits there was no such record of his entry existing. (Tr. p. 77.) Although the Government had it in its possession all the while, yet the trial court held that it was not newly discovered evidence. (Tr. p. 237.) Although the trial court allowed present counsel to stipulate what Emil Corenbleth, petitioner's counsel at his trial on its merits, would testify, instead of having him appear as a witness, and the testimony was that Corenbleth knew nothing of the existence of petitioner's registration for selective service for World War I (Tr. p. 234), yet the trial court held it was not newly discovered evidence (Tr. p. 237), when there was no evidence whatever to the contrary.

No. 2

It is inconceivable that had petitioner been given a new trial and produced the documentary evidence he produced at the hearing upon his motion for a new trial he would again be found guilty under the indictment under which he was tried. It is the well settled rule that if the evidence produced as newly discovered, and is actually such, upon a motion for a new trial, is of such substantial nature as would likely produce a different result at another trial, it is an abuse of discretion to overrule such motion.

No. 3

The failure to properly exercise discretion is an abuse of discretion. The trial court actually held that petitioner

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was 20 years of age June 30th, 1913, which would make him more than 48 years of age on February 16th, 1942 (Tr. p. 237), yet he stated that under the indictment as brought, petitioner could be again tried and convicted even if he were over 45 years of age if it be proven that he was under 65. (Tr. p. 237.) The trial court also conceded that petitioner was 23 years of age June 5th, 1917, at the time he registered for selective service for World War I (Tr. p. 235), yet he held this immaterial. The trial court found that petitioner was "considerably confused about how old he is" (Tr. p. 235), and a government witness, Alton Bryant, an agent of the Federal Bureau of Investigation, testified that petitioner told him he did not know how old he was (Tr. p. 81), yet the trial court resolved the doubt in favor of the Government's theory of the case.

No. 4

At the hearing upon petitioner's motion for a new trial, the trial court allowed the government to introduce a number of applications for life insurance, in which petitioner stated he was born July 10th, 1898 (Tr. pp. 121-227), which, if true, would make him under 45 years of age on February 16th, 1942. The trial court assumed the function of a jury and passed upon the weight of this testimony offered by the Government as against that offered by

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petitioner, and disregarded what effect the newly discovered evidence might have at another trial. (See Cleary vs. United States, 163 F. (2), 748.)

CONCLUSION

1. Under Presidential Proclamation No. 2535 (50 U.S.C.A., Appendix Paragraph 302, note), February 16th, 1942, was fixed as the date on which all men between the ages of 19 and 45 should register. Men in no other bracket were required to register until Presidential Proclamation No. 2541 (50 U.S.C.A., supra), issued March 19th, 1942, fixed the date of April 27th, 1942, on which all men between the ages of 18 and 65 should register. Petitioner was indicted for having failed to register on February 16th, 1942, "*and the said defendant being then and there such a person who was bounden under the provisions and requirements of said Act, Rules, Orders and Regulations to so register* * * *." The trial court held petitioner was over 45 years of age on February 16th, 1942, but it was immaterial if he were under 65. The majority opinion of the Circuit Court (Tr. p. 252), virtually upholds this view of the law. Petitioner earnestly urges that such a view of the law is so sharply in contrast with the opinion of this Court in *Cole vs. Arkansas*, supra, as to require the reversal of this case.

2. If the trial court and the majority of the Circuit Court of Appeals hold this opinion of the law, petitioner contends that all of them abused their respective discre-

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tions in failing to give him the relief sought, because, it is improbable that they, under such circumstances, could fairly pass upon the issues involved.

3. If petitioner were actually over 45 years of age on February 16th, 1942, it was an abuse of the sound discretion of the trial court, and sanctioned by the Circuit Court of Appeals, to overrule petitioner's motion for a new trial, timely brought under Rule 33 of Federal Rules of Criminal Procedure, regardless of other requirements they hint are lacking. There is always a sound legal remedy to prevent injustices as long as courts have jurisdiction. Those courts did have; this Court now has.

WHEREFORE, petitioner prays that the writ of certiorari issue; that the cause be reviewed by this Court, and that the judgment of the trial court and the Circuit Court of Appeals be reversed.

.....

Republic Bank Building
Dallas, Texas
Attorney for Petitioner.

.....

Republic Bank Building
Dallas, Texas
Of Counsel.

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No.———

IN THE

Supreme Court of the United States

SAM HANNA FOGEL, *Petitioner*

vs.

UNITED STATES OF AMERICA, *Respondent*

SUPPORTING BRIEF

To the Honorable, The Supreme Court of the United States:

1

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit appears in the Transcript of the Record (Tr. pp. 249-259).

JURISDICTION

Jurisdiction is invoked under Section 240 (a) of the Judicial Code (28 U.S.C.A., Section 347-a). The original opinion of the Circuit Court of Appeals was filed on May 7th, 1948.

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Petition for rehearing was filed on May 21st, 1948, and overruled on May 28th, 1948.

STATEMENT OF THE CASE

We adopt the statement made in the foregoing petition for certiorari as a part of the statement of the case and, to save repetition, do not restate it here. If further statements are deemed appropriate to the argument, they will, accordingly, be made.

SPECIFICATION OF ERRORS

1

Petitioner was indicted for having failed to register for selective training and service on February 16th, 1942. Under Presidential Proclamation No. 2535, no persons other than men between 19 and 45 were required to register on that date. It was not until Presidential Proclamation No. 2541 went into effect, fixing the date of April 27th, 1942, on which men between 18 and 65 should register, that others than the first class were required to register. Petitioner was indicted as being one of the first class and was so tried and so found guilty. All the proof the Government offered was in an attempt to prove Petitioner was under 45 on February 16th, 1942. It was not until petitioner filed his motion for new trial under Rule 33 of Federal Rules of Criminal procedure for the District

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Courts of the United States that the question arose and was urged by the Government and sustained by the trial Court and upheld by the Circuit Court of Appeals that petitioner would be guilty, even if he were over 45 years of age, if he were under 65.

Petitioner, therefore, urges that to indict him for one offense and convict him of another, of which he was neither indicted nor tried is such error, denounced by the Fifth Amendment to the Constitution of the United States and by this Court in *Cole vs. Arkansas*, 92 L. Ed., 429 (Advance Sheet No. 11, decided March 8th, 1948), as to require a review by this Court and a reversal of the trial court and the United States Circuit Court of Appeals for the Fifth Circuit.

2

At the trial of this cause on its merits, Glenn A. Torrence, naturalization examiner for the United States Immigration and Naturalization Service, a witness called by the Government, testified that a search had been made and there was no record existing of petitioner's entry into the United States, he being an alien and so registered. (Tr. pp. 77-78.)

At his hearing upon his motion for new trial brought under Rule 33, supra, petitioner presented and introduced into evidence certified copy of the record of his entry into

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the United States as reflected by the records of the United States Immigration and Naturalization Service at Philadelphia, the place Torrence testified had been searched and nothing found, which said record had been in possession of the United States authorities since his arrival, yet the Court held this was not newly discovered evidence (Tr. p. 237), and the Circuit Court of Appeals upheld this view, and further held petitioner was guilty of negligence by not having it at his trial. (Tr. pp. 249-255.)

Petitioner further produced and introduced into evidence at the hearing upon his motion for new trial certified copy of his registration for selective service for World War I, showing him to have been 23 years of age on June 5th, 1917 (Tr. p. 233), and the trial Court held, and was affirmed by the Circuit Court of Appeals, this was not newly discovered evidence, regardless of the fact that the trial court had allowed the stipulation that counsel for petitioner knew nothing of its existence, and did not know of the existence of the record of his entry into the United States. (Tr. p. 234.)

Petitioner, therefore, urges that such action on the part of the trial court, and its sanction by the Circuit Court of Appeals, is an abuse of discretion, constituting error of such substantial and harmful nature as to require a review by this Court and a reversal of the trial court and the Circuit Court of Appeals.

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3

As against the evidence offered by petitioner as above set out in Specification of Errors 1 and 2, the trial court allowed the Government to introduce evidence and documents signed by petitioner, tending to show he was born in 1898 (Tr. pp. 113-212), and the trial court proceeded to weigh this testimony as against that offered by the petitioner at the hearing upon his motion for new trial.

Petitioner, therefore, urges that, he having presented newly discovered evidence of substantial nature at a hearing upon his motion for a new trial, it was an abuse of discretion for the trial court to usurp the functions of a jury or a judge at another trial and weigh the testimony of the government against that offered by him, and constitutes error of such harmful and substantial nature as to require a review by this Court and a reversal of the trial court and the Circuit Court of Appeals.

ARGUMENT

Petitioner concedes that it was within the sound discretion of the trial court to grant or refuse to grant his motion for new trial, and the burden is upon him to show the trial cort abused such discretion in overruling his motion. There are two general ways such discretion may be abused, (1) to erroneously exercise it, or (2) to erroneously fail to exercise it. Petitioner earnestly urges the trial

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court committed both errors here and the Circuit Court of Appeals did likewise in sustaining the trial court. In holding the evidence produced by petitioner at the hearing upon his motion for new trial was not newly discovered, the trial court and Circuit Court of Appeals erroneously exercised and abused sound discretion. In holding that, although petitioner was over 45 years of age on February 16th, 1942, he could be convicted under the indictment in this case if he were under 65, the trial court and Circuit Court of Appeals failed to apply properly the law governing the case, and did, thereby, abuse the sound discretion that was theirs.

WAS THE EVIDENCE NEWLY DISCOVERED?

At the original trial of this cause, the government proved by its witness, Glenn A. Torrence, an examiner for the Immigration and Naturalization Service, that there was no record of the entry of petitioner into the United States, (Tr. p. 77), whereby his correct age might be proven by such documentary evidence. Petitioner subsequently found and produced it at the hearing upon his motion for new trial. (Tr. p. 31). Yet the trial court and Circuit Court of Appeals held it was not newly discovered, and the Circuit Court of Appeals went even further and held if it were newly discovered evidence, petitioner was guilty of negligence in not producing it at his original trail.

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Bearing upon whether this is newly discovered evidence within the meaining of such new trials, petitioner quotes with approval and adopts the following portion of the dissenting opinion of Judge Sibley rendered in this case in the Circuit Court of Appeals:

"As to the record evidence being newly discovered, of course Josef and Sam knew that Sam came to Philadelphia in 1913, and there ought to be a record of his entry. The Bureau of Immigration and Naturalization was asked for it and reported none could be found. It has since been found. How can the Government, which had the record all the while and said it did not exist, assert a want of diligence in producing it? It became available to Fogel only since the trial, and is newly discovered within the law of new trials. It strongly supports the testimony of Josef, the only living witness who knows the fact of Sam's age, and would likely produce a different result on another trial." (Tr. p. 258)

Petitioner contends that the position of the majority opinion of the Circuit Court of Appeals that the evidence is sharply conflicting as to whether the record of entry produced, (Tr. p. 31), is that of petitioner is error. Josef Fogel, (Tr. pp. 63-69), and Nathan Selcovits, (Tr. pp. 45-49), testified that Schloime Vogel and Sam Fogel are one and the same person. That was the same name "in the Old Country" as Sam Fogel is here. Josef is

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Sam's brother. Selcovits was raised in the same town with Sam and Josef and had known them always. Josef sent for Sam while he lived at 1613 Orkney Street, Philadelphia, Pennsylvania. The record introduced shows that is who sent for Schloime Vogel, and that was where he was going when he got to America. Josef and Selcovits testified that they were born in Roszyny, Russia, (now Poland) with Sam. That is where Schloime Vogel was born, as shown by the record. They testified that Sam's father was named Chaim Vogel, who lived at Rozyny, Russia. That was the father and place of his residence of Schloime Vogel as shown by the record. Josef testified, supra, that he and Sam were the only ones of his family ever to come to America. All the others were killed in World War I.

Sam was 20 years of age then. He was 53 at the time of his trial. Does the Government expect him to be the same size and appearance and look at 53 like he did at 20? The argument, we believe, that he is not one and the same person as Schloime Vogel is too weak to attract the attention of this Honorable Court. Of course Sam Vogel and Schloime Vogel is one and the same person. As a matter of fact, this Court judicially knows that "Vogel" in German is the same as "Fogel" in English. The Court judicially knows that "Schloime" is the Yiddish for Sam. Josef testified, supra, that his and Sam's mother's name

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was Hannah, and Sam adopted that as his middle name when he came to America.

The trial court held and found that Sam Fogel and Schloime Vogel was one and the same person, because he said: "Now, when this man came over here, he was a bright young fellow, twenty years of age. He showed his good judgment by coming right straight to Texas, and he went down here to Waxahachie where they raised good cotton." (Tr. p. 237) The trial court could have drawn this conclusion from no other source than the record of the entry of Schloime Vogel. Waxahachie, Texas, is the place Sam Hanna Fogel came to from Philadelphia. (Tr. pp. 14-30). The record of petitioner's entry into the United States is newly discovered evidence, and in view of the fact it was admitted and proved that Sam was confused about his age, this newly discovered evidence would most certainly produce a different result at another trial of this case. That is the test.

Petitioner contends that his Exhibit No. 4, (Tr. p. 233), the record of his having registered for selective service for World War I, is likewise newly discovered evidence. It appears for the first time at the hearing upon his motion for a new trial. (Tr. p. 256) The stipulation of Corenbleth's testimony, (Tr. p. 234), was that he new nothing of the existence of this document. Of course, this Court judicially knows that Corenbleth is an officer of the court

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where petitioner was tried, and was a reputable lawyer, otherwise he could not have appeared as counsel for petitioner. The Court further judicially knows that it is only on rare occasions that the trial courts put lawyers, admitted to practice therein, under oath. Present counsel knew and believed that Corenbleth's unsworn statement, dictated into the record, was to be given the same force and effect as would his sworn testimony if he had been there in person, otherwise, he would have moved for a continuance in order that his presence might be had.

The position of the Government and the Circuit Court of Appeals that petitioned was guilty of negligence by not having this testimony at his trial, petitioner believes, is without merit. It most certainly is in respect to the record found at the Port of Entry. The Government certainly cannot retain possession of documents, contend it does not exist, and when, despite the Government's action and contention, it is found, take the position it is nothing new and petitioner was negligent in not having it at his trial. We think it equally true of the record of Petitioner's registration for selective service at World War I. Corenbleth did not know of its existance. He was Fogel in so far as the conduct of that trial is concerned. If Corenbleth were guilty of negligence, which we most certainly contend he was not, can his client be held liable and compelled to pay a criminal penalty for it? It is not done

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that way in American Courts. Besides, there is no evidence against our position. If there are presumptions, they must be resolved in favor of petitioner, and not the Government.

Petitioner earnestly contends and believes that this Honorable Court had in mind injustices exactly like this here done petitioner when it adopted Rule 33 of Federal Rules of Criminal Procedure for the District Courts of the United States. There is no question but that the newly discovered evidence here produced proves that petitioner was more than 45 years of age on February 16th, 1942. That evidence was not available to him at his trial. Under the old rules it could not have been brought forward as it is here brought, and petitioner's only redress would have been to the pardoning powers. In the meantime, he would have languished in prison for probably the duration of his sentence, while his friends and counsel sought the ear of that pardoning power. This Rule gives the courts an adequate legal power to prevent these injustices, and when this power is not properly exercised by lower courts, it constitutes an abuse of discretion, which should be reviewed by this Court. If ever there were a case where the provisions of this Rule should be invoked, it is this one.

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WAS PETITIONER MORE THAN 45 YEARS OF AGE ON FEBRUARY 16th, 1942? AND IF HE WAS, COULD HE BE LEGALLY CONVICTED UNDER THE INDICTMENT BROUGHT IN THIS CASE?

At the trial of this case, the only evidence the Government had was the statements petitioner made in connection with his registration as an alien, and his petition for natuarlization, in which he stated that he was born July 10th, 1898. (Tr. pp. 72-79) A Government witness, Alton Bryant, a Federal Bureau of Investigation Agent, testified while examining petitioner in the course of his duty as such agent, petitioner stated that did not know his exact age. (Tr. p. 81) The trial Court held and found at time of his orginal conviction, (Tr. p. 255), and at the time he overruled his motion for new trial, (Tr. p. 235), that "The defendant, Sam Fogel, seems considerably confused about how old he is." Then we are forced to the conclusion that the only effect the Government's proof had upon the trial court was to create "a considerable confusion about how old he is."

On the other hand, the proof offered by petitioner at the hearing upon his motion for new trial is positive. He, according to the Government's records, was 20 years of age June 30th, 1913, and according to the records, would have been 21, July 10th, 1913, and 49 years of age February 16th, 1942. He was 23 years of age June 5th, 1917,

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making him 48, February 16th, 1942, but 49 July 10th, 1942. These records, made years ago and before petitioner ever applied for life insurance, tally exactly, and show, we believe, beyond doubt, that petitioner was over 45 on February 16th, 1942. The trial court found and held in its oral opinion at the conclusion of his hearing upon the motion for new trial that he was 20 years of age June 30th, 1913, and 23 years of age June 5th, 1917, when he said: "Now, when this man came over here, he was a bright young fellow, twenty years of age. He showed his good judgment by coming right straight to Texas, and he went down here to Waxahachie where they raised good cotton." (Tr. p. 237.) Petitioner urges that the trial court so having found from the evidence presented at the hearing upon his motion for new trial that he was 20 years of age, June 30th, 1913, making him 49 on February 16th, 1942, it was an abuse of sound discretion not to set aside the verdict and give him a new trial. American Jurisprudence, Vol. 14, Page 279; *Cleary vs. United States*, 163 F. (2), 748; *United States vs. Socony Vacuum Oil Co.*, 310 U. S., 257, 84 L. Ed., 1181; *Cole vs. Arkansas*, 92 L. Ed., 429 (Advance Sheet No. 11, decided March 8th, 1948); *Fogel vs. United States*, 162 F. (2) 54; *Langreen vs. United States*, 282 U. S., 530, 75 L. Ed., 520, 51 Sup. Ct., 243; *Mattox vs. U. S.*, 146 U. S., 140.

Petitioner believes the language of the indictment upon which he was convicted is so important to the petition here

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presented that it should here be repeated. Omitting the formal parts, it charges that petitioner *on February 16th*, 1942, "* * * did, unlawfully, wilfully, and feloniously, with intent to evade induction into the land or naval forces of the United States of America, fail and neglect to register with a Selective Service Draft Board, which said act and failure to act on the part of the said defendant, as aforesaid, were in violation of the Act of Congress of the said United States, approved September 16th, 1940, as amended, and the Rules, Orders and Regulations issued and promulgated by virtue of and in pursuance thereto, *and the said defendant was then and there such a person who was bounden under the provisions and requirements of said Act, Rules, Orders and Regulations to so register as is required by the provisions of the said Act and the said Rules, Orders, and Regulations.*"

Presidential Proclamation No. 2535 (50 U.S.C.A., Appendix Paragraph 302, Note) fixed the date of February 16th, 1942, as the day all male persons between the ages of 19 and 45 should register. The Act or Statute was inoperative until put into effect by such Presidential Proclamation. It follows, of course, that if petitioner were over 45 years of age on February 16th, 1942, he was not required and was under no obligation to register. Indeed, had he tried to register on that date and had given his correct age of 49, he would not have been permitted to register. But the indictment charged that he was then and

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there (on February 16th, 1942) such a person who was required to register on that date. It was not until April 27th, 1942, that Presidential Proclamation No. 2541 (50 U.S.C.A., supra) directed that another class, to-wit, all male persons between the ages of 18 and 65 should register. Petitioner was not charged with this violation.

Petitioner says that the able dissenting opinion of Judge Sibley (Tr. p. 255), so nearly states his position in this case he quotes and adopts this portion of it as his: "The indictment, filed January 22nd, 1947, charges the failure to register 'on or about the 16th day of February, 1942.' That is the date on which by Presidential Proclamation persons between 18 and 45 years of age were required to register. Fogel was tried for failing to register on that date, being under 45. The whole controversy in the trial was whether he was under 45 or over 45. The judge in finding him guilty said: 'In this case, as to the matter of age, the defendant on oath fixes his age (in applying for citizenship) as of July 10th, 1898. In the light of the record we are of opinion that this should be accepted as true. * * * We think that it correctly fixes the age of defendant.' He thereupon found him guilty."

No question or intimation ever arose during the trial of this case in the trial court nor in the Circuit Court of Appeals (*Fogel vs. United States*, 162 F. (2), 54) that Fogel had ever been indicted or was being tried for any

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offense, other than he was under the age of 45 on February 16th, 1942, and failed and refused to register. In passing upon his appeal and upon his contention that he was over 45 years of age on February 16th, 1942, said Circuit Court of Appeals in *Fogel vs. United States*, supra, at pages 55-56, said:

"There is no merit in the contention that the evidence was insufficient to show that Fogel was within the age group subject to registration. The evidence shows that on or about February 7th, 1946, Fogel, an alien, appeared for a hearing in the office of the Naturalization Examiner at Dallas, Texas, on his application for registration as an alien. At that time he stated under oath that he was born in Poland on July 10th, 1898. Again on September 12th, 1946, Fogel was in the office of the Naturalization Examiner in Dallas and a number of questions were propounded. Each question was read to him and he again answered under oath, stating that he had been born on July 10th, 1898.

"Fogel did not take the stand in his own behalf. His brother, Joseph Fogel, said he had been instrumental in bringing Samuel to this country in 1913. (Immigration officers, however, were unable to find when and where Samuel entered this country.) Joseph further testified that Samuel was much older than the age he had given to the Naturalization Examiner. Joseph admitted that he had

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left Poland, which was under the domination of Russia, to escape military service, and his evidence was misleading and evasive in many respects.

"(3, 4) The evidence was sufficient to establish appellant's age as being within the age group subject to registration on February 16th, 1942. Appellant was born in Poland, and his parents were dead. Certainly, birth records were not available. The next best evidence was his own statement made under oath to the Naturalization Examiner. The statements were in no wise confessions or admissions of guilt of the offense charged in the indictment. When these statements were made, no indictment had been returned. The statements were not made in relation to this prosecution, but were voluntarily made and sworn to by Appellant at a time when he sought to obtain protection and privileges of citizenship in this country, while he was at the same time wilfully failing and neglecting to register to serve it in its struggle for survival. *The evidence warranted a finding that Fogel's age was below 45 years on the day fixed for registration.*" (Italics ours.)

However, when petitioner made the showing at the hearing upon his motion for a new trial, the trial court changed its attitude both with reference to what the law was and for what Fogel was being tried. In overruling petitioner's motion for a new trial, the trial court said:

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"We do not believe the evidence, so far as the defendant is concerned, is newly discovered. For that reason, we do not feel that the case should be set aside. But, if we were to concede that it was newly discovered evidence, and that his birth date was back in 1894, instead of 1898, under the law, as pointed out by the District Attorney, it would still have been his duty to have registered, and we believe that he could be put on trial again, if we granted a new trial, under the indictment, as it now exists." (Tr. p. 237.)

The Circuit Court of Appeals also changed its position as to the law governing this case when the appeal from the overruling of petitioner's motion for a new trial reached it. In its opinion affirming the action of the court below that court said: "It is without dispute that Appellant not only failed to register for Selective Service on February 16th, 1942, the date set by Presidential Proclamation for the registration of all males between the ages of 19 and 45, but that he further failed to register on and after April 27th, 1942, the date set by second Presidential Proclamation for the registration of all males between the ages of 19 and 65. There is no dispute that Appellant is under 65 years of age."

It is our contention that if Appellant were over the age of 45 on February 16th, 1942, he would not be guilty of the offense charged in this indictment. He was never charged nor tried for having failed to register on April

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27th, 1942, the date set for all males to register who were over 45 years of age. It is the Congress, not the Court, which defines a crime and ordains its punishment. Every criminal charge must have a clear legislative basis. There are no constructive offenses and before one can be punished, it must be shown that the case is plainly within the statute.

There is no question in our mind that failure to register on February 16th, 1942, is one offense, and failure to register on April 27th, 1942 is another offense, and that they are separate and distinct offenses. In *Cole vs. Arkanas*, supra, the petitioners applied to this Court for certiorari because their convictions were affirmed in the court below under a criminal statute for violation of which they had not been charged. This Court held in that case that it was in violation of due process to charge one with one crime and convict him for another. In so holding this court said:" No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal." This court further held in that case:" It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to

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convict him upon a charge that was never made." That was done to us.

In overruling petitioner's motion for a new trial, he was denied due process as guaranteed by the Fifth Amendment to he Constitution of the United States and in violation of decision of this court as announced in *Cole vs. Arkansas*, supra; *Re Oliver vs. U. S.* 68 S. Ct.,———, decided March 8th, 1948; *DeJonge vs. Oregan*, 299 U. S. 353, 362, 81 L. Ed. 278, 282, 57 S. Ct.; *Frank vs. Mangum*, 237 U. S. 309, 327, 59 L. Ed. 969, 980, 35 S. Ct., 582; *Cf. Mooney vs. Holohan*, 294 U. S. 103, 113, 79 L. Ed. 791, 794, 55 S. Ct., 340, 98 A.L.R. 406.

CONCLUSION

The action of the trial court in overruling petitioner's motion for a new trial and the opinion of the Circuit Court of Appeals in affirming the trial court was an abuse of sound discretion, requiring a review by this Court, and a reversal of those courts, because:

1. Charging petitioner with one offense and convicting him of another was in violation of due process.

2. Failure of the trial court to construe the law in connection with the facts proven in the hearing upon his motion for a new trial, and the action of the Circuit Court of Appeals in affirming such procedure are contrary to the opinions of this Court and of other Circuits.

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3. The opinion of the Circuit Court of Appeals for the Fifth Circuit, affirming the trial court's actions above complained of, is such a departure from the accepted and usual course of judicial proceedings as to require an exercise of this Court's power of supervision.

The petition should ge granted and the case reversed, for which we respectfully pray.

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INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	4
Argument	15
Conclusion	21

CITATIONS

Cases:

Cole v. *Arkansas*, 333 U. S. 196	20, 21
Evans v. *United States*, 122 F. 2d 461, certiorari denied 314 U. S. 698	16
Fogel v. *United States*, 162 F. 2d 54, certiorari denied, 332 U. S. 791	4, 9, 20
Johnson v. *United States*, 32 F. 2d 127	17
Prisament v. *United States*, 96 F. 2d 865	17
Wagner v. *United States*, 118 F. 2d 801, certiorari denied, 314 U. S. 622	17
Weiss v. *United States*, 122 F. 2d 675, certiorari denied, 314 U. S. 687	16

United States statutes:

Selective Training and Service Act of 1940, c. 720, 54 Stat. 885, as amended by the Act of December 20, 1941, c. 602, § 1, 55 Stat. 844:	
Sec. 2	2
Sec. 10	2
Sec. 11	3

Miscellaneous:

Federal Rules of Criminal Procedure, Rule 33	5
Presidential Proclamation No. 2535, issued January 5, 1942, and designating Third Registration Day (7 F. R. 177)	3
Presidential Proclamation No. 2541, issued March 19, 1942, and designating Fourth Registration Day (7 F.R. 2181)	3

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 116

SAM HANNA FOGEL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The majority and dissenting opinions in the circuit court of appeals (R. 248-254) have not yet been reported. The oral opinion of the district court appears at R. 235-237.

JURISDICTION

The judgment of the circuit court of appeals was entered May 7, 1948 (R. 255), and a petition for rehearing was denied May 28, 1948 (R. 264). The petition for a writ of certiorari was filed June 24, 1948. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as

amended by the Act of February 13, 1925. See also Rules 37(b)(2) and 45(a), F.R. Crim. P.

QUESTION PRESENTED

Whether the district court abused its discretion in denying petitioner's motion for a new trial on the basis of alleged newly discovered evidence as to his age in a prosecution for failure to register for selective service.

STATUTES AND REGULATIONS INVOLVED

The Selective Training and Service Act of 1940, c. 720, 54 Stat. 885, as amended by the Act of December 20, 1941, c. 602, § 1, 55 Stat. 844, provided in pertinent part:

> SEC. 2 [50 U.S.C. App. 302]. Except as otherwise provided in this Act, it shall be the duty of every male citizen of the United States, and of every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and sixty-five, to present himself for and submit to registration at such time or times and place or places, and in such manner and in such age group or groups, as shall be determined by rules and regulations prescribed hereunder.
>
> * * * * *
>
> SEC. 10 [50 U.S.C. App. 310]. (a) The President is authorized—
>
> (1) to prescribe the necessary rules and regulations to carry out the provisions of this Act;
>
> * * * * *

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> Sec. 11 [50 U.S.C. App. 311]. * * * any person * * * who * * * evades registration * * * or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act, * * * shall, upon conviction * * *, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

Presidential Proclamation No. 2535, issued January 5, 1942, and designating Third Registration Day (7 F.R. 177), provided in pertinent part:

> 2. (a) Every male citizen of the United States, and every other male person residing in the continental United States * * * is required to and shall on February 16, 1942, present himself for and submit to registration before a duly designated registration official or selective service local board * * * if such male citizen or other male person on December 31, 1941, has attained the twentieth anniversary of the day of his birth and on February 16, 1942, has not attained the forty-fifth anniversary of the day of his birth, and has not heretofore been registered * * *.

Presidential Proclamation No. 2541, issued March 19, 1942, and designating Fourth Regis-

tration Day (7 F. R. 2181), provided in pertinent part:

> 2. (a) Every male citizen of the United States, and every other male person residing in the continental United States * * * is required to and shall on April 27, 1942, present himself for and submit to registration before a duly designated registration official or selective service local board * * * if such male citizen or other male person on February 16, 1942, had attained the forty-fifth anniversary of the day of his birth and on April 27, 1942, has not attained the sixty-fifth anniversary of the day of his birth, and has not heretofore been registered * * *.

STATEMENT

A single-count indictment (R. 1-2) filed January 22, 1947, in the District Court for the Northern District of Texas charged that petitioner, on or about February 16, 1942, with intent to evade military service, wilfully failed to register with a selective service draft board, in violation of the Selective Training and Service Act of 1940, as amended, and the regulations and orders thereunder. Following a trial by a judge, a jury having been waived, petitioner was found guilty and sentenced to 18 months' imprisonment and to pay a fine of $1,000 (R. 244-245). On appeal to the Circuit Court of Appeals for the Fifth Circuit, the judgment of conviction was affirmed, Circuit Judge Sibley dissenting. *Fogel* v. *United States*, 162 F.

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2d 54. On October 20, 1947, this Court denied certiorari. 332 U. S. 791.

Thereafter, on November 3, 1947, pursuant to Rule 33 of the Federal Rules of Criminal Procedure, petitioner filed in the district court a motion for a new trial on the ground of newly discovered evidence (R. 2-5), which gave rise to the instant proceeding. Following a hearing before the same district judge who had originally found petitioner guilty (R. 13-234), the motion was denied (R. 8-9, 235-237). On appeal, the order of denial was affirmed, Circuit Judge Sibley again dissenting (R. 255).

The relevant facts may be summarized as follows:

At the original trial, the Government established by the testimony of a selective service official that petitioner, an alien resident of the United States (R. 72-74),[1] never registered for selective service in World War II (R. 83-84; see also R. 74, 80), and that fact was not and is not disputed. Petitioner's trial counsel, in cross-examining this official, asked if he had made any investigation as to whether petitioner had registered in World War I, and the official said he had made no investigation as to that (R. 84).

Another government witness at the original trial, Glenn Torrence, a naturalization examiner of the Immigration and Naturalization Service, testi-

[1] The transcript of the trial testimony was introduced in evidence at the hearing on the motion for a new trial (R. 69), and appears in the present record at R. 70-110.

fied that on two different occasions, February 7, 1946, and September 12, 1946, petitioner stated under oath to him, in a proceeding to establish his lawful entry into the United States as a preliminary to filing a declaration of intention to become a citizen, that he was born on July 10, 1898 (R. 72-73, 76). If that was petitioner's birth date, he was 43 years old on February 16, 1942, and was required by the terms of Proclamation No. 2535 (*supra,* p. 3) to register for selective service on that date.

On cross-examination of Torrence, the following occurred (R. 76-78):

> Q. Have you made any effort to verify whether Mr. Fogel's entry into this country was lawful?
>
> A. Yes, sir.
>
> Q. Have you found out anything about that?
>
> A. I found there is no record extant of his entry into the United States.
>
> Q. Is it your testimony there is no such record?
>
> A. That is the information furnished us by his claimed port of entry, I think it is Philadelphia, they have no record there of his entry into the United States.
>
> Q. Mr. Torrence, did you check the Hamburg Lines in Philadelphia, when he was supposed to have entered here?
>
> A. I did not, no, sir.

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Q. Did anybody from your department?
A. I believed that was checked.

* * * * *

Q. Do you have the ship on which Mr. Fogel came to this country?

A. Mr. Fogel says he doesn't remember the ship, I believe, he came, on which he says he came, only the Hamburg Line, and this application to file a declaration of intention was returned by our Philadelphia office, under date of August 22, 1945, stamped "Unable to verify," and the notation, "No definite statement of date of arrival. Note World War I, in 1914-1918, no German Passenger Ship arrivals then at Philadelphia."

Q. Mr. Torrence, does the log of a ship, or the records of a ship, on an immigrant, call for his age, listing of his age?

A. I believe it does. I am not able to state definitely at this time, I don't recall what all information is called for in the manifest.

* * * * *

Q. If I gave you the name of the ship, Mr. Torrence, that Mr. Fogel came into this country on, would you be in a position to get the log and show his age when he entered this country?

A. I don't know that we can get the manifest, we can get an extract of the information appearing in that manifest, which would be an official record furnished by the Port of Entry.

Q. You could do that back in June of 1913,

if that is the time that he came into this country?

A. Yes, sir.

Q. For your information, I would like to state that the evidence will develop that the ship he came in here on is the Maarian, of the Hamburg Line, and he arrived in the United States on June 18, 1913.

A. That is possible.

Q. I say, the evidence will develop and you can get the records of his age, at that time?

A. If there is a ship manifest showing his entry at that time, we can get it, yes, sir.

Mr. Corenbleth [petitioner's attorney]:

That is all.

The matter was not further pursued, and there was no request for a continuance of any kind for the purpose of making a fuller check as to the existence of documentary evidence of petitioner's arrival in the United States.

A third government witness at the original trial, Alton Bryant, a special agent of the Federal Bureau of Investigation, testified that at the request of the Immigration and Naturalization Service he had a "talk with Mr. Fogel, in regard to his registration for Selective Service, inasmuch as he had not produced a card for them," and that petitioner was unable to produce a registration card (R. 79-80).

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On cross-examination of Bryant, the following occurred (R. 81):

> Q. He told you, didn't he, that he did not know how old he was?
>
> A. That is right.
>
> Q. What was it, exactly, he said about his age?
>
> A. I asked him about his age, and he told me he did not know exactly when he was born, he was born in Poland, some city, I don't recall the name, in Poland, that he was born there, he did not recall the exact date when he was born, and we further tried to arrive at that time by the time at which he came to this country, about how old he was at that time, and about how long he had been here, and was unable to ascertain any satisfactory answers as to approximately when he came, as to how he came, where he came to, when he came to the United States, what port he entered or any information about him, sir, at all.

Petitioner's defense at his trial was that he was over 45 years of age on February 16, 1942, so that he did not fall within the age group required to register by Proclamation No. 2535 (R. 97-105).[2] Pe-

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[2] Petitioner also invoked the statute of limitations as a bar to the prosecution, but the trial court ruled that the offense was of a continuing nature and hence not barred (R. 89-97), and the ruling was upheld on appeal. *Fogel* v. *United States*, 162 F. 2d 54, 55 (C. C. A. 5), certiorari denied, 332 U. S. 791. This aspect of the original case is, consequently, not involved in the present proceeding.

titioner's evidence in respect of his age consisted of the testimony of his brother Joseph, who testified that he, Joseph, came to the United States from Poland in 1912 at the age of 21 (R. 99) and that shortly thereafter he sent for petitioner, who arrived in the United States on June 18, 1913, at which time petitioner was "close to twenty" (R. 100). According to Joseph's testimony, therefore, petitioner was 48 years old on February 16, 1942, and thus not within the age group specified in Proclamation No. 2535. Joseph further testified that petitioner arrived in Philadelphia on the ship "Maaian" of the "Hamburg Line," and that he went by the name of "Shlema" Fogel at that time (R. 103-104). Joseph admitted that "in the old Country, they actually kept no exact date of birthdays." He explained how he knew that he himself was 21 when he emigrated to the United States by saying that he left Poland to avoid being called into the Russian Army, departing four weeks before his induction was due, and that this was the only way he could recall his age at the time of his emigration. (R. 105.) He explained how he knew petitioner's approximate age by saying that there was "about two and a half years difference" between their ages according to "what my mother used to tell" (R. 103).

Petitioner himself did not testify at his trial.

Petitioner's motion for a new trial alleged that—

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> At the time of his trial he was named as "Samuel Hannah Fogel"; that the agents of the Bureau of Immigration and Naturalization testified that they had been unable to find the entry of this defendant into the United States, who was a Polish immigrant and who was alleged to have entered the United States some time in the year 1913; that they were unable to establish the age of the defendant at the time he entered because they could find no records in the Bureau of Immigration and Naturalization at the port of entry. That since said trial it has been discovered that this defendant had entered under the name of Schloime Vogel, and therefore the Bureau of Immigration and Naturalization had no way of finding the record of the defendant's entry; * * * (R. 3).

It further alleged that the official record of "Schloime Vogel's" entry into the United States would show that he "was 20 years of age on June 30, 1913, and therefore was not required to register under the act and proclamation for which he was charged with having violated" (R. 4). It finally alleged that—

> * * * since said trial the defendant has further learned that he registered under the Selective Service Act of World War I in Waxahachie, Texas, and that his said registration will show that he was far beyond the age of 45 at the time he was indicted for having so failed to register, * * * (R. 4).

Attached to the motion were two affidavits stating that "Schloime Vogel" and petitioner are one and the same person (R. 6-8).

At the hearing on the motion, petitioner introduced in evidence the official record of the entry into the United States of "Schloime Vogel" (R. 31). This record indicates that this person emigrated from Roszyny, Russia, arriving in Philadelphia on the ship "Merion" on June 30, 1913. "Josef Vogel, 1613 S. Orkney St., Phila., Pa." was given as the name and address of the immigrant's brother. The immigrant's height was given as 5 feet, 5 inches, his complexion as fair, the color of hair as light brown, and the color of his eyes as gray.[3] His age was given as 20.[4]

Petitioner's brother Joseph testified at the hearing that he was the "Josef Vogel, 1613 S. Orkney St., Phila., Pa." referred to in the entry record, and that "Schloime Vogel" is merely the Hebrew equivalent of Samuel Fogel (R. 63-65). One Selcovits, a friend of the two brothers, who was living with Joseph at the Philadelphia address at the time petitioner allegedly arrived in this country, gave similar testimony (R. 45-48).

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[3] The record indicates that petitioner's height is 5 feet, 8 inches, his complexion is ruddy, his hair is black, turning gray, and his eyes are brown (R. 33, 23). In addition, several witnesses at the hearing testified that they knew petitioner in Texas around the years 1916-1917, and that his hair and eyes were dark at that time (R. 17, 21, 23, 27).

[4] Which, if true, and if petitioner and Schloime Vogel are the same person, would have made petitioner 48 or 49 on February 16, 1942, and so not within the age group covered by Proclamation No. 2535.

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Petitioner also introduced in evidence at the hearing on the motion his World War I draft registration record, dated June 5, 1917 (R. 233). This indicated that at that time he gave the year of his birth as 1894, and his age as 23.[5]

Petitioner, as at the original trial, did not testify at the hearing.

The Government established at the hearing that petitioner, on fifteen occasions between March 9, 1927, and March 12, 1935, in applying for life insurance policies, gave the date of his birth as July 10, 1898 (R. 122, 133, 146, 152, 156, 160, 164, 168, 171, 175, 179, 183, 186, 190, 207). The Government also showed that on October 30, 1946, petitioner gave July 10, 1898, as the date of his birth to a deputy United States marshal on the occasion of his arrest in this case (R. 216-217). This was the same date which, according to the Government's evidence at the original trial, petitioner gave as his birth date to the immigration officials in the proceeding to establish his lawful entry into the country (*supra* p. 6), and would have made him 43 years old on February 16, 1942, the date on which persons up to 45 years of age were required to register for selective service.

In support of the contention that the new evidence offered at the hearing on the motion for a new trial was newly discovered evidence, peti-

[5] Which, if true, would have made petitioner 47 or 48 on February 16, 1942, and so not required to register under Proclamation No. 2535.

tioner's counsel stated to the court—and the court agreed to give the statement "some consideration"—that petitioner's trial attorney would testify, if present, that he "knew nothing on earth about Sam Fogel having registered for World War I, at the time he tried this case; he would further testify * * * that he did not know that Sam Fogel entered the United States under the name of Schloime * * * Vogel" (R. 234). Counsel pointed to the difference between petitioner's Hebrew name and its anglicized version as justification for the trial attorney's failure to locate and produce the record of petitioner's entry into the country, and added that "one of the immigration men testified they had been unable to find any place where he had entered. That is perfectly natural, because they were looking for Sam Fogel * * * and they did not know, of course, that his Polish name, or Jewish name was Schloime Vogel" (*ibid.*).

In his oral opinion denying the motion for a new trial, the district judge, after reviewing the conflicting evidence adduced at the hearing as to petitioner's age (R. 235-237), stated that the motion was denied on the ground that the evidence was not newly discovered evidence (R. 237). He added, however (*ibid.*):

> * * * But, if we were to concede that it was newly discovered evidence, and that his birth date was back in 1894, instead of 1898, under the law, as pointed out by the District

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Attorney, it would still have been his duty to have registered, and we believe that he could be put on trial again, if we granted a new trial, under the indictment, as it now exists.

And, that being the case, we see no reason for setting aside the judgment, and granting a new trial.

ARGUMENT

Petitioner, conceding that the granting or denial of a motion for a new trial on the ground of newly discovered evidence rests within the sound discretion of the court, contends that in this case that discretion was abused (Pet. 19-20). The contention is founded in large part on the belief that the district judge was convinced and found as a fact that petitioner was more than 45 years of age on February 16, 1942, and so not within the age group required to register for selective service on that day, but nevertheless arbitrarily refused to vacate the conviction and grant a new trial (Pet. 20, 27). This belief, in turn, stems from the district judge's statement in his oral opinion that "when this man came over here, he was a bright young fellow, twenty years of age" (R. 237; see Pet. 27). When this statement is read in its context, however, it is manifest that the judge was there speaking in a loose sense and did not intend the oral, casual remark as a specific finding of fact. For earlier in the opinion, he said (R. 235), "The defendant, Sam Fogel, seems considerably confused about how old he is. He was born in Russia,

or Poland, sometime, it appears, in the Nineties." Such a remark is scarcely consistent with a precise finding as to petitioner's age in 1913, when he emigrated to this country. Again, at the end of the same paragraph in which occurs the language relied on by petitioner (R. 237), he said, "But, if we were to concede * * * that his birth date was back in 1894, instead of 1898, under the law, * * * it would still have been his duty to have registered * * *." It is clear from this that the judge made no definite finding, and expressed no conviction, as to petitioner's exact age at the time of his emigration.

The fact is that, without attempting to resolve the evidential conflict as to petitioner's age, the district judge denied the motion for a new trial because he did "not believe that the evidence, so far as the defendant is concerned, is newly discovered evidence" (R. 237). Contrary to petitioner's contention (Pet. 20-25), we submit that in so ruling he clearly did not abuse the discretion which admittedly was his to exercise.

To warrant the granting of a new trial on the basis of newly discovered evidence, it is well settled that the new evidence relied on must be in fact newly discovered and such that the movant could not reasonably be expected, with the exercise of due diligence, to have known about it at the time of the trial. *Weiss* v. *United States,* 122 F. 2d 675, 691 (C. C. A. 5), certiorari denied, 314 U. S. 687; *Evans*

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v. *United States,* 122 F. 2d 461, 468-469 (C. C. A. 10), certiorari denied, 314 U. S. 698; *Wagner* v. *United States,* 118 F. 2d 801, 802 (C. C. A. 9), certiorari denied, 314 U. S. 622; *Prisament* v. *United States,* 96 F. 2d 865, 866 (C. C. A. 5); *Johnson* v. *United States,* 32 F. 2d 127, 130 (C. C. A. 8). The two new items of evidence relied on in the motion for a new trial were (1) petitioner's World War I draft registration record, showing that he gave his age as 23 in June 1917 (*supra,* p. 13), and (2) the immigration record of his entry into the United States,[6] which listed his age as 20 in June 1913 (*supra,* p. 12). We submit that, with due diligence, petitioner could have produced both these instruments at his trial, and that consequently the district judge was warranted in refusing to consider them as newly discovered evidence within the rule permitting the granting of a new trial on that basis.

With regard to the World War I draft registration record, petitioner obviously knew at the time of his trial, and long before, whether or not he had ever registered for selective service in the First World War. Registering for the draft is undeniably a major event in any man's life, and is not likely to be forgotten. Consequently it was idle for

[6] We assume, *arguendo,* that petitioner is the same person as the "Schloime Vogel" who was the subject of this entry record. The majority below, however, were "in no wise" convinced of this (R. 251), because of the wide disparity between petitioner's physical characteristics and those of the subject of the entry record as listed therein (R. 250; and see p. 12, *supra*).

him to allege, as he did in his motion for a new trial (*supra,* p. 11), that "since said trial" he had "learned that he registered under the Selective Service Act of World War I." Obviously, too, he could have procured his draft registration record for use at his trial just as easily as he procured it for use in connection with the motion for a new trial.[7]

With regard to the immigration record of petitioner's entry into the United States, due diligence on petitioner's part would likewise have enabled him to procure this document at the time of his trial. All the pertinent facts that were needed to locate this document, and particularly the key fact that he entered the country under the name of Schloime Vogel, rather than Samuel Fogel, were peculiarly within his knowledge. Petitioner certainly knew what port he landed at, the approximate date of his arrival, and the name of the ship

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[7] Petitioner's assumption that because his trial *attorney* was unaware of the existence of his World War I draft registration record, the record may be considered as newly discovered evidence (Pet. 24-25), is unfounded. Evidence, to be newly discovered, must have been unknown and unavailable to the defendant himself at the time of his trial. Moreover, it seems scarcely conceivable that petitioner's trial attorney, whose principal contention at the trial was that petitioner was well over 45 years of age on February 16, 1942 (and consequently of draft age during World War I), would not have thought to ask petitioner whether he registered for the draft in the First World War. Significantly, in this connection, the trial attorney, in cross-examining the selective service official who testified that his investigation had disclosed that petitioner did not register for selective service, was careful to adduce the admission that the witness' investigation had been limited to the World War II draft and had not been concerned with the World War I draft (*supra,* p. 5).

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on which he arrived. Indeed, both his trial attorney and his brother Joseph, who testified at the trial, seem to have been entirely familiar with all such data (see pp. 10, [redacted], *supra*). The immigration authorities, however, after a careful check of their files, had found "no record extant of [petitioner's] entry into the United States" (*supra*, p. 6). Yet petitioner made no motion for a continuance for the purpose of making a further investigation as to whether the record was available. The key to the mystery of the apparent non-existence of the entry record—the fact that petitioner came into the country under a different name from that which he subsequently adopted—was within the power of petitioner to produce. Petitioner's brother Joseph was well aware at the trial that when petitioner arrived in this country he had a different first name, at least, from his subsequently adopted one (*supra*, p. 10), and it is unreasonable to suppose, therefore, that petitioner himself had forgotten the fact. In any event, reasonable diligence on the part of petitioner and his trial counsel would certainly have resulted in the production of the entry record at the trial.[8]

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[8] The dissenting judge below said (R. 254), "As to the record evidence [of petitioner's entry] being newly discovered, of course Josef and Sam knew that Sam came to Philadelphia in 1913, and there ought to be a record of his entry. The Bureau of Immigration and Naturalization was asked for it and reported that none could be found. It has since been found. How can the Government, which had the record all the while and said it did not exist, assert a want of diligence in producing it?" This argument is now adopted by petitioner (Pet. 11, 17-18, 20, 21, 24). The argument, however, ignores entirely the crucial fact that the reason why the immigration authorities could not

Furthermore, apart from the question of whether the district judge was justified in finding that the proffered new evidence was not newly discovered, he was clearly correct, we submit, in the alternative ground of denial of the motion for a new trial (supra, pp. 14-15). For, as was pointed out at pp. 13-14 of our brief in opposition to certiorari in *Fogel* v. *United States,* No. 285, last Term, certiorari denied, 332 U. S. 791, even if petitioner was over 45 on February 16, 1942, he would have been required, having been under 65, to register on April 27, 1942, under the terms of Presidential Proclamation No. 2541 (*supra,* pp. 3-4). He did not register on that date either, as proved by the government at the original trial. It would seem that such proof was sufficient to establish petitioner's guilt under the indictment inasmuch as the offense was alleged to have been committed "on or about the 16th day of February, A. D. 1942" (R. 1) and the indictment did not make reference to any particular Presidential Proclamation fixing a specified date of registration (R. 1-2).[9]

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find the record was the fact that there was none under the name of *Samuel Fogel,* and that due diligence on petitioner's part in disclosing the disparity in the name by which he entered the country and that which he subsequently adopted would have resulted in the discovery of the record. Indeed, this was conceded in the motion for a new trial (*supra,* p. 11), and in the course of the hearing below (*supra,* p. 14).

[9] *Cole* v. *Arkansas,* 333 U. S. 196, relied upon by the dissenting judge below (R. 253) and by petitioner (Pet. 33-34) as invalidating the alternative ground on which the district judge denied the motion for a new trial, is distinguishable from the present case. There, the defendants were tried for and convicted of the crime of promoting an unlawful as-

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CONCLUSION

The petition for a writ of certiorari presents no question requiring further review by this Court. We therefore respectfully submit that it should be denied.

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JULY 1948.

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semblage. Their conviction was affirmed on the ground that they had been proved guilty of the crime of using force and violence to prevent a person from following a lawful vocation. As pointed out by the Court (333 U. S. at p. 200), the two offenses were "separate, distinct, and substantially different." In the present case, it scarcely can be said that the offense of failing to register for selective service on February 16, 1942, was "separate, distinct, and substantially different" from the offense of failing to register for selective service on April 27, 1942. The essence of the offense in either case was failing to register as required by law. Petitioner concededly did not register as required by law, since he admits to being under 65 and hence in a class that was required to register at some time. And, as we have pointed out in the text, failure to register as required by law was all that he was charged with, since the indictment alleged that the offense occurred "on or about" February 16, 1942, and no specific Presidential Proclamation was alleged to have been violated.

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No. 116. FOGEL *v.* UNITED STATES. Certiorari, *ante*, p. 811, to the United States Court of Appeals for the Fifth Circuit. *Per Curiam:* Upon consideration of the Government's confession of error and the record, the judgment of the Court of Appeals is reversed and the case is remanded to the District Court with directions to va-

cate its order denying the motion for a new trial and to grant a new trial. *Maury Hughes* for petitioner. *Solicitor General Perlman, Assistant Attorney General Quinn, Robert S. Erdahl* and *Philip R. Monahan* for the United States. Reported below: 167 F. 2d 763.